

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. 03-628

MARY BETH CLAYTON,)

)

Petitioner/Respondent,)

v.)

)

STEPHEN LLOYD CLAYTON,)

)

Respondent/Appellant)

BRIEF OF RESPONDENT/APPELLANT

APPEAL FROM THE MONTANA THIRTEENTH JUDICIAL DISTRICT
YELLOWSTONE COUNTY, THE HONORABLE DIANE G. BARZ

District Court Case No. DR 02-0705

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I. STATEMENT OF THE ISSUES

Issue 1. The District Court erred by adopting Petitioner's Preliminary Proposed Parenting Plan without granting Respondent's requested right of first refusal provision to Respondent, the noncustodial parent, when the Petitioner, the custodial parent, places child in daycare or alternate care rather than allowing Respondent to provide personal care for his minor child, thus unfairly restricting Respondent's contact with his daughter.

Issue 2. The District Court erred by not excluding from the marital estate the \$20,000 donative gift made expressly for the benefit of Respondent as an advance on his inheritance from Respondent's parents.

Issue 3. The District Court erred by determining that the remaining \$17,000 debt Petitioner and Respondent still owed to Respondent's father for an automobile loan given to Petitioner and Respondent for their joint benefit did not exist but then proceeded to assign the non-existent debt wholly to Respondent.

II. STATEMENT OF THE CASE

Plaintiff filed a petition for dissolution, a proposed distribution of assets and liabilities and a proposed parenting plan granting liberal visitation to Respondent. Respondent filed his proposed distribution of assets and liabilities, which requested the District Court to exclude from the marital estate a \$20,000 donative gift Respondent received from his parents as well as include into the marital estate for equitable distribution of an acknowledged outstanding debt of approximately \$17,000 Petitioner and Respondent owed Respondent's father. Respondent also submitted his proposed parenting plan that requested liberal visitation when Petitioner was at work and Respondent was off from work. After trial, the District Court made THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND FINAL DECREE, dated July 28, 2003, which restricted Respondent's visitation with his daughter and failed to exclude a \$20,000 donative gift to Respondent from his parents or include the outstanding debt for equitable distribution. From this Findings of Fact and Conclusions of Law, and Final Decree ordered by the District Court Respondent appeals.

III. STATEMENT OF THE FACTS

Petitioner Mary Beth Clayton (hereinafter Mary Beth or Petitioner) and Respondent Stephen Lloyd Clayton (hereinafter Steve or Respondent) were married on December 30, 1995 in Greenville, Greenville County, South Carolina. (Mary Beth's PETITION FOR DISSOLUTION OF MARRIAGE, p. 2). Mary Beth and Steve separated on or around June 10, 2002. (*Id.*) Mary Beth concurrently filed her PETITIONERS PRELIMINARY PROPOSED PARENTING PLAN that stated their minor child, Grace Marie Clayton (hereinafter Grace), resided with Mary Beth when Mary Beth left the family residence. (PETITIONERS PRELIMINARY PROPOSED PARENTING PLAN, pp. 1-2). Mary Beth proposed that Grace have "liberal visitation with Respondent/Husband." (*Id.*, p. 2, ¶ 4). Steve was concerned that Grace was being improperly cared for and was confused about her paternity. (AFFIDAVIT OF STEPHEN LLOYD CLAYTON, dated July 25, 2002). As the Court had not adopted any parenting plan and Mary Beth had taken Grace from the marital residence, Steve's "liberal visitation" with Grace stopped after Steve filed his affidavit; Steve then filed a MOTION FOR SHOW CAUSE HEARING AND BRIEF along with his RESPONDENT'S PROPOSED INTERIM PARENTING PLAN on August 19, 2002, requesting that Grace live primarily with Steve in the

family residence. (RESPONDENT'S PROPOSED INTERIM PARENTING PLAN, p. 2).

Grace was telling both of her parents different information, or stories, about the other parent. (AFFIDAVIT OF STEPHEN LLOYD CLAYTON, dated August 26, 2002) and (AFFIDAVIT OF MARY BETH CLAYTON, dated September 3, 2002). Mary Beth then filed her PETITIONER'S AMENDED PROPOSED PARENTING PLAN that further restricted Steve's claimed "liberal visitation" that Steve was suppose to have with Grace and Mary Beth agreed to.

(PETITIONER'S AMENDED PROPOSED PARENTING PLAN, dated September 5, 2002).

Mary Beth objected to Steve's MOTION FOR SHOW CAUSE HEARING AND BRIEF and requested that the District Court adopt her proposed parenting plan, which still allegedly allowed Steve to have "liberal visitation." (PETITIONER'S RESPONSE TO RESPONDENT'S MOTION FOR SHOW CAUSE HEARING, PETITIONER'S MOTION TO ADOPT PRELIMINARY AMENDED PARENTING PLAN AND FOR CHILD SUPPORT ORDER, dated September 4, 2002).

The District Court adopted Mary Beth's PETITIONER'S AMENDED PROPOSED PARENTING PLAN, effective immediately, without either party

being allowed to present testimony or evidence. (ORDER Re: INTERIM PARENTING PLAN AND SETTING HEARING, dated September 10, 2002).

The parties presented testimony regarding their respective proposed parenting plans on September 24, 2002. (ORDER ADOPTING TEMPORARY PARENTING PLAN, p. 1, dated October 15, 2002). The Court modified Mary Beth's proposal to allow Steve to have "two (2) weeknight visitations with the minor child per week, on days of his choosing during the period from 4:00 p.m. through 8:00 p.m. In addition, Father shall be entitled to visitation/custody of said minor child every other weekend from Friday at 4:00 p.m. through Sunday evening at 6:00 p.m." (*Id.*, p. 2).

Mary Beth works full-time for Allen's Tool Repair. (TRANSCRIPT OF PROCEEDINGS, p. 10, l. 9-16). Grace goes to a private residence daycare ran by Mary Beth's friend, Alice Mills. (*Id.*, p. 10, l. 24 – p. 11, l. 1-10). Steve requested to have his daughter on his days off during the week. (*Id.*, p. 34, l. 7-9). One reason that Mary Beth refused to allow Steve to have Grace on his days off from work was that Mary Beth claimed that she wanted to insure the financial stability of her daycare provider. (*Id.*, p. 34, l. 21-23). Mary Beth's friend, Alice Mills, who watches Grace also watches two (2) of Mary Beth's boyfriend's children that live with Mary Beth. (*Id.*, p. 35, l. 15-19). Mary Beth admitted that

she pays Alice Mills a weekly rate of \$50 (*Id.*, p. 11, l. 23-24; p. 37, l. 22-24).

Mary Beth contradicted her contention when she then claimed that it was not financially viable for her to pay Alice Mills when she is not watching Grace. (*Id.*, p. 38, l. 8-12). Mary Beth admitted that she pays Alice Mills whether Grace attends or not. (*Id.*, p. 38, l. 5-7).

Mary Beth stated that she does not want Steve to watch Grace rather than going to daycare at Alice Mills because Grace gets to see people, goes places and has fun when Grace is with Alice. (*Id.*, p. 38, l. 13-23). Mary Beth admits that Steve has the right of first refusal, but only when daycare is closed and she has to work. (*Id.*, p. 41, l. 11-13). Mary Beth refuses to allow Steve to have additional time with Grace other than the specific times the District Court ordered but only because Mary Beth claims that Steve has never asked for more. (*Id.*, p. 41, l. 17-20). Through nine counseling sessions, Mary Beth has never discussed Steve's request for additional parenting time with Grace's counselor, Mary Macki. (*Id.*, p. 60, l. 18-22).

Steve's work schedule is alternating weekends off but the remaining work week is flexible and Steve can request specific days during the week to be off from work. (*Id.*, p. 85, l. 9-25, p. 86, l. 1). Steve would like, at the bare minimum, to have Grace on his days off from work and Mary Beth is working. (*Id.*, p. 87, l. 4-10).

Mary Beth does not let Steve have Grace on his days off from work. (*Id.*, p. 34, l. 10-12). Mary Beth's absolute position is that Steve should not spend anymore time with Grace and that it is better to keep Grace in daycare. (*Id.*, p. 53, l. 7-10).

Mary Macki, Mary Beth's expert witness, admits that Grace is well bonded to Steve and has a very healthy relationship with him. (*Id.*, p. 61, l. 14-21). Grace has told Mary Macki that Steve called Mary Beth's domestic partner negative names. (*Id.*, p. 62, l. 11-18). Mary Macki stated that if negative name calling ceased, the relationship would be healthier. (*Id.*, p. 62, l. 17-18). Mary Macki stated that after she discussed this issue with Steve on June 3, 2003, there were no more reported incidents of negative name calling. (*Id.*, p. 62, l. 20-25 – p. 63, l. 1-2; p. 65, l. 16-20)

Mary Macki states that it would be more beneficial to Grace to spend as much time with both parents than to minimize contact with one parent. (*Id.*, p. 61, l. 22-25 – p. 62, l. 1-7). Although Mary Beth had attended seven (7) counseling sessions in the room with Grace (*Id.*, p. 64, l. 13-15), Steve had also attended two (2) counseling sessions with Grace after Mary Beth allowed Steve to attend the counseling sessions with Mary Macki. (*Id.*, p. 65, l. 15-25).

Grace would benefit by having increased time with her father. (*Id.*, p. 66, l. 13-

18). Mary Beth never discussed with Mary Macki the fact that Steve was requesting additional time with Grace. (*Id.*, p. 60, l. 18-22). The District Court appeared to have already reached its decision on this matter when it asked the leading question to Mary Beth's expert witness by suggestion whether it would be a more practical solution to require further counseling between Steve, Grace and Mary Macki before Steve was allowed to spend more time with Grace. (*Id.*, p. 69, l. 16-25).

Mary Macki responded that Steve might have one or two more counseling sessions, depending on insurance coverage. (*Id.*, p. 70, l. 17-20). When Steve's counsel asked Mary Macki to clarify what she would request of Steve, the District Court interrupted and answered for Mary Macki that the District Court thought it was a matter of quality time and what Mary Macki can accomplish. (*Id.*, p. 71, l. 6-12).

The District Court determined that the cross-examination of Mary Macki by Steve's counsel regarding her expert opinions had invaded the province of the District Court. (*Id.*, p. 71, l. 14-17). When Mary Macki was cross-examined regarding her willingness to provide a written report as to additional parenting time Steve could spend with Grace, the District Court apparently premised its decision regarding additional parenting time for Steve when it stated that the

bottom line was that Steve had not been paying for Mary Macki's counseling sessions. (*Id.*, p. 74, l. 9-19).

Steve received a donative gift of \$20,000, paid directly to the bank, from his parents as a down payment to purchase a house. (*Id.*, p. 125, l. 8-17; p. 97, l. 19-25 – p. 98, l. 1-3). Steve's parents gave approximately an additional \$5,000 to cover Mary Beth and Steve's escrow costs. (*Id.*, p. 125, l. 18-25 – p. 126, l. 13).

Steve's father, Art Clayton, lent Mary Beth and Steve \$19,543 to purchase a pickup through General Motors direct purchase program. (*Id.*, p. 120, l. 15-25 – p. 121, l. 1-16). Mary Beth and Steve later sold that pickup and lived on the proceeds. (*Id.*, p. 43, l. 9-15). Mary Beth and Steve made eight (8) payments of \$300 each to repay Art Clayton. (*Id.*, p. 126, l. 20-25 – p. 127, l. 1-8). Art Clayton testified that he had no intention of forgiving Mary Beth or Steve from the remaining loan balance. (*Id.*, p. 124, l. 19-21).

Mary Beth acknowledged this debt to Art Clayton by writing the loan payment checks to Art Clayton. (*Id.*, p. 124, l. 22-25 – p. 125, l. 7). Mary Beth acknowledges that the debt to Art Clayton for the pickup exists, however, not for her, although she benefitted from the loan also. (*Id.*, p. 43, l. 16-23). The District Court determined, before it heard all the testimony and reviewed all evidence, that it had decided that Mary Beth would not be held liable for the debt

that Mary Beth had just acknowledged that she benefitted from and made payments to Art Clayton for. (*Id.*, p. 43, l. 25 – p. 44, l. 1-7). Mary Beth and Steve still owe Art Clayton \$17,000. (*Id.*, p. 127, l. 9-12).

Steve's parents gifted \$10,000 each directly to the real estate title company for the specific and sole benefit of Steve. (*Id.*, p. 97, l. 13-25; Respondent's Exhibit E). This \$20,000 gift was never commingled with any joint marital property or accounts. (*Id.*, p. 98, l. 1-3).

IV. SUMMARY OF ARGUMENT

Issue 1. The District Court erred by adopting Petitioner's Preliminary Proposed Parenting Plan without granting Respondent's requested right of first refusal provision to Respondent, the noncustodial parent, when the Petitioner, the custodial parent, places child in daycare or alternate care rather than allowing Respondent to provide personal care for his minor child, thus unfairly restricting Respondent's contact with his daughter.

The District Court erred by adopting Mary Beth's Preliminary Proposed Parenting Plan as modified by the Court's Order of October 12, 2002, without including a first right of refusal provision granting Steve, the noncustodial parent, a right of first refusal when the Mary Beth, the custodial parent, places the minor child (hereinafter Grace) in daycare or alternate care rather than allowing Steve to provide personal care for his minor child. Steve's work schedule allows Steve to provide personal care for Grace rather than placing Grace in daycare or other alternate care arrangements. Mary Beth refuses to allow Steve to provide personal care for their daughter at any other time other than the limited times that Mary Beth's parenting plan allows which was adopted by the District Court without consideration of Steve's work schedule and availability to provide personal care for their daughter. This amounts to an unfair restriction on Steve's contact with

Grace.

Issue 2. The District Court erred by not excluding from the marital estate the \$20,000 donative gift made expressly for the benefit of Respondent as an advance on his inheritance from Respondent's parents. Steve was given a \$20,000 gift of a down payment, not commingled with any joint marital assets, from his parents as part of an advance on his inheritance. This gift was evidenced by a "gift" letter, admitted as Respondent's Exhibit E, expressly for Steve's benefit from his parents directly to the title company handling the closing on the residence.

Issue 3. The District Court erred by not equitably dividing the \$17,000 debt still owed to Steve's father for an automobile loan given to Mary Beth and Steve. During their marriage, Mary Beth and Steve purchased a new GM pickup that Steve's father paid for, through a loan to Mary Beth and Steve, in order for Mary Beth and Steve to receive a substantial savings as Steve's father was a retired General Motors employee. Mary Beth and Steve commenced making the loan payments back to Steve's father. Mary Beth and Steve later sold the pickup and used the proceeds for living expenses. Steve's father testified that this loan to Mary Beth and Steve had to be paid back and was not a gift to the parties.

V. ARGUMENT

Issue 1.

The District Court erred by adopting Mary Beth's Preliminary Proposed Parenting Plan, as modified by the Court's Order of October 12, 2002. Mary Beth executed her preliminary proposed parenting plan on June 21, 2002. Mary Beth filed for Dissolution on June 28, 2002. The District Court held a Show Cause Hearing on September 24, 2002, without granting Steve's request for a right of first refusal provision granting Steve, the noncustodial parent, a right of first refusal when Mary Beth, the custodial parent, places Grace in daycare or alternate care rather than allowing Steve, the "other" parent, to provide personal care for his minor child.

In *In re the Marriage of Firman* (1980), 187 Mont. 465, 610 P.2d 178, the Montana Supreme Court stated that a noncustodial parent is entitled to a fair opportunity to share in the child's love or affection.

In this case, the District Court did not include a right of first refusal for Steve, the noncustodial parent, to take care of Grace if Grace is to be placed in daycare. Steve should be able to take care his child if he is available rather than taking the child to daycare. This can be easily accomplished without any reduction of

parenting time Mary Beth has with Grace as Steve has only requested the additional time with Grace when Mary Beth is working and he is not. Granting the right of first refusal to Steve would only benefit Grace and Steve without taking away any parenting time from Mary Beth. The right of first refusal in this case would provide a win-win situation without any detriment, other than a “loss of control” that Mary Beth may perceive.

Montana Code Annotated § 40-4-212 **Best interest of child** provides that:

(1) The court shall determine the parenting plan in accordance with the best interest of the child. The court **shall** consider all relevant parenting factors, which may include but are not limited to:

(a) **the wishes of the child's parent or parents;**

...

(c) the interaction and interrelationship of the child with the child's parent or parents and siblings and with any other person who significantly affects the child's best interest;

...

(l) **whether the child has frequent and continuing contact with both parents, which is considered to be in the child's best interests unless the court determines, after a hearing, that contact with a parent would be detrimental to the child's best interests.** In making that determination, the court shall consider evidence of physical abuse or threat of physical abuse by one parent against the other parent or the child, including but not limited to whether a parent or other person residing in that

parent's household has been convicted of any of the crimes enumerated in 40-4-219(8)(b).

...

(emphasis added)

This statute clearly requires the District Court to consider ALL denominated subsections of this statute, which, in essence, should relate to nearly all the considerations that address the best interests of the minor child, and thus, are important to Montana legislators as well as all parents. The statute clearly points out that it is in the best interests of a minor child “**whether the child has frequent and continuing contact with both parents, which is considered to be in the child's best interests unless the court determines, after a hearing, that contact with a parent would be detrimental to the child's best interests**” § 40-4-212(1)(l) MCA. (emphasis added).

In this case, the District Court never found, or even considered, that Grace’s contact with Steve would be detrimental to Grace’s best interests. Steve requested more time with Grace, time that would not take away time from Mary Beth. The legislators have shown their long-held intention to safeguard family relationships but not at a cost to a minor child’s best interests. The District Court has decided through its judgment, as did Mary Beth through her testimony, that it would be more in Grace’s best interest to stay at daycare than with Steve. (TRANSCRIPT

OF PROCEEDINGS, p. 53, l. 7-10).

In this case, giving Steve, the noncustodial parent, the right to spend more time with his daughter, especially when it does not take away any time from the custodial parent nor remove Grace from any formal educational attendance, rather than place the child in daycare serves to safeguard family relationships. Steve would be able to build and maintain his father/daughter relationship and improve his communication skills with her, which is beneficial to both Steve and Grace. Mary Beth's expert acknowledged that it would be in Grace's best interests to spend more time with Steve (*Id.*, p. 66, l. 13-18), in light that she determined that Grace was well bonded with Steve and has a very healthy relationship with him. (*Id.*, p. 61, l. 14-21).

In addition, a parent's right to spend additional time with one's child only makes sense. Today, as most parents must work long hours to support their children, allowing the maximum time a child spends with the parent, rather than being placed in daycare or watched by a third-party, or not all, seems to increase risk of negative consequences to the child, especially if the parent and child have a "very healthy relationship" as Steve and Grace do. Allowing a parent to care for the child further strengthens the bond between the parent and the child.

In conclusion, the District Court erred in not allowing Steve a first right of refusal

over Grace's daycare attendance as such a right would be in the best interest of the child. If the District Court was going to restrict a noncustodial parent's time with the minor child, the District Court must make findings "that contact with [Steve] would be detrimental to [Grace's] best interests." § 40-4-212(1)(l) MCA.

The District Court did not, nor could not, do that because Steve has not conducted himself in any of the proscribed manners the statute denominates as a basis for restricting contact between Steve and Grace. The lack of substantial evidence to support judgment is the determining factor for reversible error. *In re the Marriage of Wang* (1995), 271 Mont. 291, 294 quoting *Frazier v. Frazier* (1984), 208 Mont. 150. Although the District Court stated in its findings that "[u]ntil such time as Respondent ceases to make negative, inflammatory and derogatory references about the mother to the child, visitation will be rigid and limited." (THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND FINAL DECREE, p. 5, l. 1-2).

Issue 2.

The District Court erred in not excluding the \$20,000 gift of equity to Steve from Steve's parents from the marital estate.

The Montana Supreme Court reviews a District Court's findings of fact regarding the division of marital property to determine whether they are clearly erroneous. *In re Marriage of Ortiz* (1997), 282 Mont. 500, 503, 938 P.2d 1308, 1310. A finding is clearly erroneous if it is not supported by substantial evidence, if the District Court misapprehended the effect of the evidence, or if the Supreme Court's review of the record convinces them that the District Court made a mistake. *Kovarik v. Kovarik*, 1998 MT 33, ¶¶ 20, 287 Mont. 350, ¶¶ 20, 954 P.2d 1147, ¶¶ 20.

If the findings are not clearly erroneous, the Montana Supreme Court will affirm the distribution of property unless the District Court abused its discretion. *In re Marriage of Stufft* (1996), 276 Mont. 454, 459, 916 P.2d 767, 770. The test for an abuse of discretion is whether the trial judge acted arbitrarily without employment of conscientious judgment or has exceeded the bounds of reason resulting in substantial injustice. *Schmieding v. Schmieding*, 2000 MT 237, ¶¶ 22, 301 Mont. 336, ¶¶ 22, 9 P.3d 52, ¶¶ 22.

In this case, the \$20,000 gift of equity should be excluded from the marital estate by setting this amount aside to Steve. The District Court abused its discretion by either not considering the substantial and clear testimony with the corroborating physical evidence presented through “Respondent’s Exhibit E” that the Steve’s parents provided the down payment directly to the title company as a gift for Steve or “misapprehended the effects of the evidence or otherwise committed a mistake in making that finding.” *In re the Marriage of Harper* (1999), 297 Mont. 290, at ¶ 3, 994 P.2d 1, quoting *Interstate Production Credit Ass’n v. DeSaye*, 250 Mont. 320, 323, 820 P.2d 1285, 1287 (1991).

In *In re Marriage of Eklund*, 236 Mont. 77, 768 P.2d 340 (1989), the Montana Supreme Court upheld the District Court’s decision to set aside \$60,000 of the marital estate to the husband as that was a gift from his parents.

After removing the \$20,000 gift of equity, Mary Beth is entitled to an equitable portion of the remaining equity in the marital residence resulting from the difference between Mary Beth and Steve’s adjusted purchase price from the net sale price upon the sale of the marital residence. Mary Beth should not, however, be entitled to the equity in the house that directly resulted from a gift solely to Steve as an advance on his inheritance or as an estate planning tool of his parents. *See Siefke v. Siefke*, 302 Mont. 167, 13 P.3d 937 (2000).

In this case, the District Court acted arbitrarily without employment of conscientious judgment and exceeded the bounds of reason resulting in substantial injustice. The \$20,000 payment was paid directly to the title company by the Steve's parents as a gift to Steve, as the "Respondent's Exhibit E" clearly supported, which Steve used as the down payment on the home. The District Court erred in not acknowledging the \$20,000 gift to Steve as a gift for an advance on Steve's inheritance.

Therefore, the \$20,000 gift should not be considered part of the marital estate but rather extracted from the equity in the marital residence to be given back to Steve as it was originally, a gift to Steve from his parents. Mary Beth would not have benefitted from such gift had she not been married to Steve.

Issue 3.

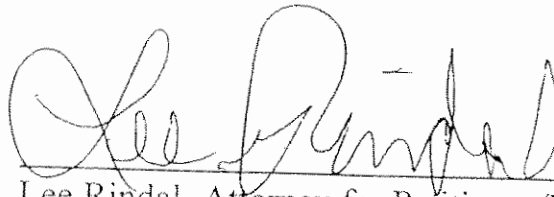
The District Court erred by determining that the remaining \$17,000 debt Petitioner and Respondent still owed to Respondent's father for an automobile loan given to Petitioner and Respondent for their joint benefit did not exist due to its "Statute of Frauds" comment (TRANSCRIPT OF PROCEEDING, p. 43, l. 25 – p. 44, l. 1-3) but then proceeded to assign the judicially-determined non-existent debt wholly to Respondent. This was in contradiction to Mary Beth's testimony that she had been repaying Steve's father for the loan by making payments but she did not believe the debt "existed" for her.

In this case, the District Court erred in allocating the debt to Steve as the Mary Beth benefitted from the loan. *See In re Marriage of Stewart* (1988), 232 Mont. 40, 75 P.2d 765. Steve's parent's originally provided a loan to Mary Beth and Steve to purchase a vehicle, which was marital asset. The marital asset was later sold to be used by both Mary Beth and Steve for normal marital living expenses. The debt to Steve Clayton's father remains an outstanding liability to both parties and therefore a part of the marital estate. The District Court erred in not allocating the debt equally among the parties as the debt was a part of the marital estate. Both parties clearly benefitted from the vehicle. Therefore, the debt should be a part of the marital estate and equitably allocated among both parties.

CONCLUSION

The District Court erred in adopting Mary Beth's parenting plan without granting Steve the right of first refusal to provide personal care of his minor daughter rather than allowing Mary Beth to put the daughter in daycare, thus restricting the time Steve is allowed with his daughter, without determining that Steve's contact with Grace would be detrimental to Grace. The record is without substantial evidence to support this necessary determination even if the District Court had made the necessary findings. Mary Beth even acknowledged that Steve has a right of first refusal, but restricted to only the times that daycare is closed and she is at work. This is an unfair restriction on Steve's contact with Grace and is against the expert witness' stated belief that Grace and Steve would both benefit from additional contact with Steve. The District Court also erred by not excluding from the marital estate an express and specific donative "gift" of \$20,000 to Steve from his parents. Finally, the District Court erred by determining that the marital debt of \$17,000 owed to Steve's father and acknowledged by Mary Beth through her partial repayments of this debt, was non-existent due to "Statute of Frauds" and apparently a "gift" to Steve, thereby removing this mutual debt from equitable distribution within the marital estate.

DATED this 8th day of December, 2003.

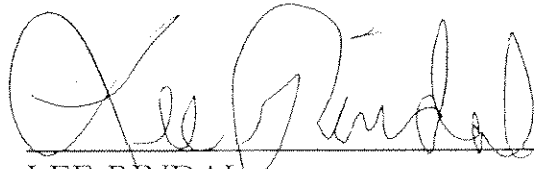
A handwritten signature in cursive script, appearing to read "Lee Rindal", written over a horizontal line.

Lee Rindal, Attorney for Petitioner/Respondent

CERTIFICATE OF MAILING

I, LEE RINDAL, do hereby certify that on the 8th day of December, 2002, I served the foregoing on counsel for Petitioner/Respondent by depositing the same in the U.S. Mails, postage prepaid thereon, addressed as follows:

Toby Alback
Alback & Boschert, P.C.
208 North 29th Street, Suite 227
Billings, Montana 59101

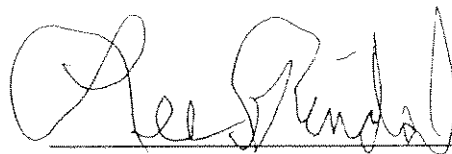


LEE RINDAL
Attorney for Respondent/Appellant

RESPONDENT/APPELLANT'S CERTIFICATE OF COMPLIANCE

COMES NOW Lee Rindal, attorney for the Plaintiffs/Appellants and advises the Court that the Appellants' Brief is in compliance with Rule 27 of the Rules of Appellate Procedure. The Brief uses mono-spaced typeface with font size of 14. The font is Roman, Non-Script (Times New Roman), and the Brief, by itself, contains 4,617 words, 350 lines, and is 22 pages long per WordPerfect 3.5e for Macintosh.

DATED December 8th, 2003.

A handwritten signature in cursive script, appearing to read "Lee Rindal", written over a horizontal line.

Lee Rindal, RINDAL LAW FIRM
Attorney for Respondent/Appellant

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

IN RE THE MARRIAGE OF:

Cause No.: DR-02-0705Judge: Diane G. Barz

MARY BETH CLAYTON,

Petitioner,

and

STEPHEN LLOYD CLAYTON,

Respondent.

THE COURT'S
FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
FINAL DECREE

This matter came before the Court for hearing on June 18, 2003; the Honorable Diane G. Barz, District Court Judge, presiding in Courtroom #518, Yellowstone County Courthouse, Billings, Montana. Both the Petitioner and the Respondent were present with their attorneys.

The Court, having heard the testimony and evidence presented, and being fully advised in the premises, now makes the following Findings of Fact:

FINDINGS OF FACT

1. The parties hereto were married on the 30th day of December, 1995, in Greenville, Greenville County, South Carolina; the marriage license having been issued in said County and State.

2. Respondent was duly served with the Petition for Dissolution of Marriage herein on July 3, 2002.

3. Both Petitioner and Respondent currently reside in Billings, Yellowstone County, Montana, and each have lived in such County and State for a period in excess of ninety days prior to the filing of the Petition for Dissolution of Marriage herein.

4. The marriage of the parties is irretrievably broken in that there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage and there is no reasonable prospect of reconciliation.

5. The Respondent has alleged and the Petitioner has not denied that the marriage of the parties is irretrievably broken.

6. The conciliation provisions of the Montana Conciliation Act and Section 20-4-107(2), M.C.A., do not apply.

7. The parties were separated as of June 10, 2002.

8. The parties have one minor child born as issue of the marriage, namely: Grace Marie Clayton, age 4, born February 18, 1999. Said minor child is the natural child of the parties hereto.

9. The Petitioner/Wife is not now pregnant.

10. The parties hereto have accumulated marital assets which should be equitably distributed between them as follows:

<u>ASSET</u>	<u>VALUE</u>	<u>WIFE</u>	<u>HUSBAND</u>
Family Home	\$110,000.00	One-half	One-half
1999 Olds	4,700.00		\$ 4,700.00
1990 Dodge Ram	Premarital	Premarital	
Household Goods	Unknown	Equitable Share	Equitable Share
Kiln	450.00	\$ 450.00	
Potters Wheel	100.00	100.00	
Hitachi Table Saw	100.00	100.00	
Router Porter Cable	100.00	100.00	
Compressor	90.00		90.00
Glock 357 Pistol	400.00		400.00
Ruger 357 Magnum	350.00	350.00	
Zenith 13" TV	Premarital	Premarital	
Zenith 27" TV	250.00		250.00
RCA 19" TV	150.00		150.00
Magnavox VCR	Premarital		Premarital

1	Phillip's DVD/VCR	200.00		200.00
	Refrigerator	400.00		400.00
2	Queen Bed	Premarital		Premarital
	Quilt Stand	120.00	120.00	
3	Old Desk	Premarital		Premarital
4	Recliner	200.00		200.00
	TV Stand	\$ 12.00		\$ 12.00
5	Cupboard Hutch	250.00		250.00
	AM/FM Receiver	Premarital		Premarital
6	Speakers	Premarital		Premarital
	Microwave Cart	25.00		25.00
7	Handmade Table	50.00		50.00
	Globe	5.00		5.00
8	Zenith VCR	50.00		50.00
	CD Boom Box	20.00	\$ 20.00	
9	Ruger 10/22 .22	Premarital		Premarital
10	Sansui Video Camera	400.00	400.00	
	SONY Digital Cam	125.00		125.00
11	Hoover Vacuum	125.00		125.00
	Futon Mattress	40.00		40.00
12	Photo Enlarger	Premarital		Premarital
	Ryobi Trimmer	90.00		90.00
13	Dewalt Drill	30.00		30.00
	Dewalt Saw	50.00		50.00
14	Small Lawn Mower	20.00		20.00
	Large Lawn Mower	75.00		75.00
15	Small Lawn Mower	50.00		50.00
	Ruger .223 Rifle	300.00		300.00
16	Enfield Rifle	Premarital		Premarital
	CZ-75 Pistol	Premarital		Premarital
17	S&W Revolver	120.00		120.00
18	Ruger 357 Pistol	Premarital		Premarital
	T/C Rifle	Premarital		Premarital
19	.12 Shotgun	Premarital		Premarital
	Davis .38	Premarital		Premarital
20	Oneida Dinnerware	Premarital	Premarital	
	Gracie's Bed	100.00	100.00	
21	Bedroom Set (Purchased			
	By Husband's parents)	400.00		400.00
22	Dresser	100.00		100.00
23	Queen Ann Table	24.00		24.00
	Coffee Table	Premarital		Premarital
24	Misc. Baby Furniture	100.00		100.00
	Crib, Swing	100.00		100.00
25	Child's Dresser	50.00		50.00
	Kitchen Table w/4			

Chairs (Purchased by Husband's parents)	150.00		150.00
Beige Couch	200.00		200.00
Yamaha CD Changer	Gift from Parents		Gift from Parents
2 Nightstands	100.00		100.00
Winchester Rifle	300.00		300.00
Ruger Mark II Pistol	\$ 230.00		\$ 230.00
Washer/Dryer	370.00	\$ 370.00	
Whirlpool Washer	350.00		350.00
Metal Detector	300.00		300.00
Belt Sander	25.00	25.00	
Orbital Sander	60.00	60.00	
Weight Bench	35.00		35.00
Futon	270.00		270.00
Big Mirror	15.00	15.00	
Laptop	100.00		100.00

TOTALS: \$ 2,240.00 \$ 10,616.00

11. The parties have accumulated marital debt which should be equitably distributed as follows:

<u>LIABILITY</u>	<u>AMOUNT</u>	<u>TO WIFE</u>	<u>TO HUSBAND</u>
Home Mortgage	\$ 72,000.00	One-Half	One-Half
Chase Card #2	1,091.00		\$ 1,091.00
First USA Card			
Loan from Husband's Parents	17,600.00		17,600.00
Wife's Student Loan	8,570.00	\$ 8,570.00	
Husband's Student Loans	13,000.00		13,000.00

12. The testimony of Respondent father showed that providing ten (10) years of college for Petitioner, as well as substantial advances of money, were all gifts to Respondent and cannot be converted to loans that Petitioner has to repay.

13. That it is in the best interest of the parties' minor child that the Court adopt Petitioner's Preliminary Proposed Parenting Plan as modified by the Court's Order of October 12, 2002, as the Permanent Parenting Plan concerning the care, custody, control and parenting of the parties' minor

1 child. Until such time as Respondent ceases to make negative, inflammatory and derogatory
2 references about the mother to the child, visitation will be rigid and limited.

3 14. That it is in the best interest of the parties' minor child that the Medical Support Order
4 set out in the Petition for Dissolution of Marriage herein be adopted as the permanent medical support
5 order relative to such minor child.

6 15. That it is in the best interest of the parties' minor child that permanent child support be
7 ordered in this case in the amount set out in Petitioner's Final Child Support calculations filed herein.
8

9 From the foregoing Findings of Fact, the Court enters the following:

10 **CONCLUSIONS OF LAW**

11 1. The Court has jurisdiction over all persons, matters, and things involved herein.

12 2. If any of the preceding Findings of Fact constitute Conclusions of Law, they are hereby
13 incorporated by reference as if fully set forth herein verbatim.

14 3. The distribution of assets and debts set out hereinabove is equitable and should be
15 adopted by this Court.

16 4. That it is in the best interest of the minor child that Petitioner's Preliminary Proposed
17 Parenting Plan, as modified by this Court's Order on October 12, 2002, should be adopted as the
18 Permanent Parenting Plan concerning the care, custody and control of the parties' minor child.

19 5. That it is in the best interest of the parties' minor child that the Medical Support Order
20 set out in the Petition for Dissolution of Marriage herein be adopted as the permanent medical support
21 order relative to such minor child.

22 6. That it is in the best interest of the parties' minor child that permanent child support be
23 ordered in this case in the amount set out in Petitioner's Final Child Support calculations filed herein.
24
25

1 **THEREFORE**, based upon the above Findings of Fact and Conclusions of Law, the Court
2 enters the following:

3 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

4 1. The marriage of the parties is hereby dissolved.

5 2. The assets and liabilities of the parties shall be apportioned as is specifically set out
6 hereinabove.

7 3. The Court hereby adopts Petitioner's Preliminary Proposed Parenting Plan, as amended
8 by the Court's Order of October 12, 2002, as the Permanent Parenting Plan concerning the care, custody,
9 control and parenting of the parties' minor child.

10 4. The Court hereby orders that Respondent shall pay unto Petitioner child support in the
11 amount of \$129.00 per month commencing on the 1st day of August, 2003, and continuing on the 1st
12 day of each and every month thereafter until said minor child shall reach the age of majority or
13 graduate from high school (continuous enrollment presumed) whichever occurs later, but in no event
14 beyond such minor child's 19th birthday.

15 5. Said child support, as set out hereinabove, shall be payable by virtue of automatic
16 income withholding whenever possible.

17 6. The Court hereby adopted the proposed medical support order set out in the Petition for
18 Dissolution of Marriage filed herein as the permanent medical support order relative to the parties'
19 minor child as follows:

20 A. The parties shall secure and pay for health and medical coverage for the
21 minor child;

22 B. The parties shall pay the entire net premium cost of the existing health
23 insurance coverage for the child, and the parties shall be given credit for
24
25

1 such premium in computing the child support payments required under
2 the Montana Child Support Guidelines now and into the future.

3 C. The parties shall divide and pay any co-payments and deductibles
4 required under the coverage, and all medical expenses for the child
5 not covered by insurance in percentages equal to their pro-rata contri-
6 butions to the support of their child as computed by the Montana
7 Child Support Guidelines.

8
9 D. The parties shall provide for the medical care and health insurance
10 for their minor child until terminated by emancipation of such child
11 or such child's graduation from high school if the child is enrolled in
12 high school, whichever occurs later, but in no event later than such
13 child's 19th birthday.

14 7. All temporary orders issued in this case, including the temporary restraining order
15 issued with the Summons herein are hereby **VACATED** and of no further legal force and effect.

16 **LET JUDGMENT BE ENTERED ACCORDINGLY.**

17 **DATED** this 28 day of July, 2003.

18
19 
HON. DIANE G. BARZ, DISTRICT JUDGE

20 cc: Lee Rindal, Esq.
21 Toby Alback, Esq.

CERTIFICATE OF SERVICE

22 This is to certify that the foregoing was duly served by mail or by hand upon
23 the parties or their attorneys of record at their last known address on this
24 28 day of July, 2003.

25 By: 
Court Asst. to HON. DIANE G. BARZ

1 **Toby Alback**
2 **ALBACK & BOSCHERT, P.C.**
3 227 Hedden-Empire Building
4 208 North 29th Street
5 Billings, MT 59101
6 Telephone: (406) 252-4221

7 Attorney for Petitioner/Wife

CLERK OF THE
DISTRICT COURT
COPY
02 JUN 28 PM 3 14
FILED
BY _____
DEPUTY

8 **MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,**
9 **YELLOWSTONE COUNTY**

10 **IN RE THE MARRIAGE OF**

11 **MARY BETH CLAYTON,**

12 **Petitioner,**

13 **v.**

14 **STEPHEN LLOYD CLAYTON,**

15 **Respondent.**

CAUSE NO.: DR 02-07051

JUDGE: DIANE G. BARZ

**PETITION FOR
DISSOLUTION OF MARRIAGE**

16 COMES NOW the Petitioner/Wife, **MARY BETH CLAYTON**, and respectfully
17 petitions and shows this Court as follows:

18 **I:**

19 The vital statistics concerning the parties are as follows:

20 **A. PETITIONER/WIFE:**

- 21 1. Age: 28
22 2. Occupation: Manager
23 3. Petitioner/Wife now resides at Billings, Montana. Petitioner/Wife has
been a resident of the State of Montana for in excess of ninety days.

B. RESPONDENT/HUSBAND:

1. Age: 35

VIII:

Respondent/Husband is able to pay and should be ordered to pay Petitioner/Wife temporary monthly child support in an amount determined according to Section 40-4-204 M.C.A. and the Montana Child Support Guidelines, during the pendency of this action and permanent child support until terminated by emancipation of each child or each child's graduation from high school if the child is enrolled in high school, whichever occurs later, but in no event later than each such child's 19th birthday.

Respondent/Husband's obligation to pay child support should be enforced by immediate income withholding under Title 40, chapter 5, Montana Code Annotated.

IX:

The parties are able to pay and should be ordered to pay for and provide health and medical insurance coverage for the minor child during the pendency of this action and thereafter.

The Court should issue its order:

A. Requiring the parties to secure and pay for health and medical coverage for the minor child during the pendency of this action.

B. Requiring the parties to provide medical care and health insurance for the minor child in the future.

C. Requiring the parties to pay the entire net premium cost of the existing health insurance coverage for the child, but giving the parties credit for such premium in computing the child support payments required under the Montana Child Support Guidelines.

D. Requiring the parties to divide and pay any copayments and deductibles required under the coverage, and all medical expenses for the child not covered by insurance in

1 percentages equal to their pro rata contributions to the support of their child as computed by the
2 Montana Child Support Guidelines.

3 E. Requiring the parties to provide for the medical care and health insurance for
4 their minor child until terminated by emancipation of such child or such child's graduation from
5 high school if the child is enrolled in high school, whichever occurs later, but in no event later
6 than such child's 19th birthday.

7 X:

8 The parties have accumulated property and debts which should be equitably distributed
9 between them.

10 XI:

11 Each of the parties possess sufficient property and income to pay their respective costs and
12 attorney's fees incurred herein.

13 WHEREFORE, Petitioner/Wife prays:

- 14 1. That the marriage of the parties be dissolved.
- 15 2. That the property and debts of the parties be distributed between them equitably
16 and this Court issue any orders necessary to effect its division.
- 17 3. That the Court adopt the Petitioner/Wife's Proposed Parenting Plan as the
18 Interim Parenting Plan governing the parties and their minor child during the pendency of these
19 proceedings.
- 20 4. That the Court adopt the Petitioner/Wife's Proposed Parenting Plan as the Final
21 Parenting Plan governing the parties and their minor child and incorporate the same as part of
22 the Final Decree dissolving the marriage of the parties.

1 5. That the Court direct the Respondent/Husband to pay Petitioner/Wife temporary
2 child support in an amount determined in compliance with the Montana Child Support
3 Guidelines for the minor child of the parties during the pendency of this action and permanent
4 child support thereafter until terminated by emancipation of each such child or each such child's
5 graduation from high school if the child is enrolled in high school, whichever occurs later, but
6 in no event later than each such child's 19th birthday.

7 6. That the Court enter a Medical Support Order:

8 A. Requiring the parties to secure and pay for health and medical coverage during
9 the pendency of this action.

10 B. Requiring the parties to provide medical care and health insurance for the minor
11 child into the future.

12 C. Requiring the parties to pay the entire net premium cost of the existing health
13 insurance coverage for the child, but giving the parties credit for such premium in computing
14 the child support payments required under the Montana Child Support Guidelines.

15 D. Requiring the parties to divide and pay any copayments and deductibles required
16 under the coverage, and all medical expenses for the child not covered by insurance in
17 percentages equal to their pro rata contributions to the support of their child as computed by the
18 Montana Child Support Guidelines.

19 E. Requiring the parties to provide for the medical care and health insurance for
20 their minor child until terminated by emancipation of such child or such child's graduation from
21 high school if the child is enrolled in high school, whichever occurs later, but in no event later
22 than such child's 19th birthday.

1 7. For such other and further suitable relief as to this Court may seem just and
2 proper in the premises.

3 Dated this 21st day of June, 2002.

4 Mary Beth Clayton
5 MARY BETH CLAYTON
6 437 Cook Avenue
7 Billings, Montana, 59101

8 Petitioner/Wife

9 Toby Alback
10 ALBACK & BOSCHERT, P.C.
11 Attorney for Petitioner/Wife

12 VERIFICATION

13 STATE OF MONTANA)
14 : ss.
15 County of Yellowstone)

16 MARY BETH CLAYTON, being first duly sworn, upon oath, deposes and says as
17 follows:

18 I am the Petitioner/Wife in the foregoing action for dissolution of my marriage. I have
19 read the foregoing Petition and the facts and matters contained therein are true, correct and
20 complete to the best of my knowledge and belief.

21 Mary Beth Clayton
22 MARY BETH CLAYTON

23 SUBSCRIBED AND SWORN to before me this 21st day of June, 2002.



21 Kandis Koenig
22 Notary Public for the State of Montana;
23 Residing at Billings, MT
My Commission expires: 2-15-2006
Printed Name: Kandis Koenig

1 **Toby Alback**
2 **ALBACK & BOSCHERT, P.C.**
3 227 Hedden-Empire Building
4 208 North 29th Street
5 Billings, MT 59101
6 Telephone: (406) 252-4221

7 Attorney for Petitioner/Mother

COPY

CLERK OF THE
DISTRICT COURT
JEAN A. THOMPSON

'02 JUN 28 PM 3 15

FILED

BY

DEPUTY

8 **MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,**
9 **YELLOWSTONE COUNTY**

10 **IN RE THE MARRIAGE OF**

11 **MARY BETH CLAYTON,**

12 **Petitioner,**

13 **v.**

14 **STEPHEN LLOYD CLAYTON,**

15 **Respondent.**

CAUSE NO.: DR 02-0705

JUDGE: DIANE G. BARZ

**PETITIONERS PRELIMINARY
PROPOSED PARENTING PLAN**

16 COMES NOW, Petitioner/Mother, and hereby makes and proposes the following
17 parenting plan for the parenting plan of the minor child of the parties:

18 1. **IDENTIFICATION OF CHILD:** The parties have one minor child, namely
19 **GRACE MARIE CLAYTON**, age 3, born February 18, 1999, which said minor child is the
20 natural child of Petitioner/Mother and Respondent/Father. The minor child currently resides with
21 Petitioner/Mother in Billings, Montana.

22 2. **RESIDENCY OF PARENTS:** The legal residences of the parties are:

23 **MARY BETH CLAYTON**
Billings, Montana, 59101

1 **STEPHEN LLOYD CLAYTON**

2 1654 Brewington
3 Billings, Montana

4 **3. OBJECTIVES OF PARENTING PLAN:** This plan is intended to:

- 5 A. Protect our minor child's best interests;
6 B. Provide for the physical care of our child;
7 C. Provide for our child's changing needs as they grow and mature;
8 D. Set forth our authority and responsibilities with respect to our minor child;
9 E. Help us avoid expensive future court battles over our child.

10 **4. RESIDENTIAL SCHEDULE FOR THE CHILD:** Both parties have important
11 roles to play in our child's development. Petitioner/Mother therefore proposes the following terms
12 for sharing time with our children.

13 The minor child shall with the Petitioner/Mother allowing liberal visitation with
14 Respondent/Husband. In addition, the parties shall alternate custody of the minor child on the
15 following holidays as indicated:

<u>Holiday</u>	<u>Mother</u>	<u>Father</u>
Christmas Eve	Odd Years	Even Years
Christmas Day	Even Years	Odd Years
New Year's Day	Odd Years	Even Years
Memorial Day	Even Years	Odd Years
Independence Day	Odd Years	Even Years
Thanksgiving	Even Years	Odd Years
Mother's Birthday	Every Year	
Father's Birthday		Odd Years
Mother's Day	Every Year	
Father's Day		Every Years
Child's Birthday	Even Years	Odd Years

1 A. Each parent specifically agrees to provide an environment for their minor
2 child which is safe, secure, clean and conducive to the physical, mental, emotional and spiritual
3 well being of such child.

4 B. Each parent specifically agrees to promote a healthy beneficial relationship
5 between the minor child and the other parent and shall not demean or speak or act negatively in
6 any manner that would damage the natural flow of love and caring between either parent and the
7 minor child.

8 C. Each parent should share important information about the minor child's
9 health, education, discipline and all aspects of said minor child's upbringing with the other parent.

10 5. EXCHANGING INFORMATION: Both parties should be required to update
11 each other and the Court with written notice of changes in the following information:

- 12 A. Changes in residential and mailing addresses;
13 B. Changes of telephone numbers at home and at work;
14 C. Changes in names and addresses of employers;
15 D. Changes in health insurance coverage for the minor child; and
16 E. Changes in health insurance available through either party's employer
17 which could cover the party's minor child.

18 6. RESIDENTIAL CHANGES SIGNIFICANTLY AFFECTING THE CHILD:
19 If either parent's change of residence will significantly affect the child's contact with the other
20 parent, the parties should be required to follow the following procedure:

- 21 A. The moving parent will:
22 i) Prepare a written notice of his/her intention to change residences;
23 ii) Prepare a proposed revised residential schedule;

- 1 iii) Serve the non-moving parent personally or by certified mail not
2 less than 30 days before the proposed change of residence with the
3 written notice of intention to change residences and with the
4 proposed revised residential schedule; and
5 iv) File proof of service upon the non-moving parent with the Court
6 named above.

7 B. If the non-moving parent fails to respond to the written notice of intention
8 to change residences and the proposed revised residential schedule, then the non-moving parent
9 will be deemed to have accepted the proposed revised residential schedule.

10 C. If the non-moving parent objects to the proposed revised residential
11 schedule, the non-moving parent shall:

- 12 i) Prepare an alternative proposed revised residential schedule which
13 may state why the existing residential schedule should continue;
14 ii) Serve the moving parent personally or by certified mail with the
15 alternative proposed revised residential schedule within 30 days of
16 receipt of moving parent's notice; and
17 iii) File proof of service upon the moving parent with the Court named
18 above.

19 D. If the parties cannot agree upon a revised residential schedule for the child,
20 they shall promptly make arrangements to mediate their differences as provided below.

21 E. If the parties cannot agree upon a revised residential schedule for the child
22 after mediation, they may file appropriate petitions and motions with the Court.
23

1 7. ACCESS TO INFORMATION: Both parties shall have equal access to all
2 information relating to said minor child including, but not limited to, school records, counseling
3 records, and medical records.

4 8. CHILD CUSTODY MEDIATION: Petitioner/Mother proposes that in the event
5 the parties are unable to resolve an important conflict between them regarding our child, we
6 should be required to seek the assistance of a neutral third party acceptable to both of us, and to try
7 to resolve our differences through confidential mediation. Respondent and Petitioner/Mother
8 should share the cost of such mediation equally.

9 9. CHILD SUPPORT: Petitioner/Mother requests that Respondent/Father be
10 required to pay child support in an amount determined by application of the Montana Child
11 Support Guidelines.

12 10. INSURANCE: Petitioner/Mother requests that the matter of medical support be
13 required as set out in the Petition for Dissolution of Marriage filed herein.

14 11. FUTURE INSTRUMENTS: Each party should be required to promptly execute
15 and deliver to the other any and all future documents and instruments and to perform all acts
16 which may be necessary to carry into full force and affect the terms of this parenting plan.

17 12. ATTORNEYS FEES: Petitioner/Mother proposes that in the event of future
18 litigation between the parties to enforce, modify, or interpret any provision of this parenting plan,
19 the prevailing party shall be entitled to all his or her court costs, including a reasonable attorney's
20 fee and reimbursement of any costs for unsuccessful mediation.

21 13. ENFORCEMENT: Petitioner/Mother proposes that this parenting plan become
22 effective and adopted as the Interim Parenting Plan upon its approval by the District Court having
23 jurisdiction over this proceeding for dissolution of marriage.

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14. DECLARATION FOR PROPOSED PARENTING PLAN:

Petitioner/Mother declares under penalty of perjury under the laws of the State of Montana that this proposed plan has been proposed in good faith and the statements in this proposed plan are true and correct. That Petitioner/Mother and Respondent/Father have discussed the issue of parenting their child from time to time since their separation and Petitioner/Mother has structured this Preliminary Parenting Plan in conformance with the agreements she and Respondent/Father have expressed and agreed to in such conversations.

DATED this 21st day of June, 2002.

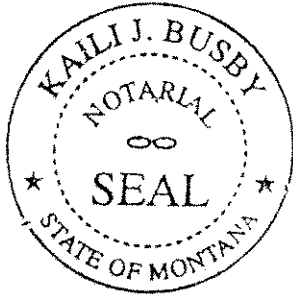

MARY BETH CLAYTON

- 1 a friend of Grace. Later I learned that he was Mary Beth's lover.
- 2
- 3 4. This is an unhealthy environment to raise a child at such a crucial time of
- 4 development. The child is confused who her father is.
- 5
- 6 5. A more serious instance occurred during the week of the 15th of July when
- 7 Grace grabbed my hand and tried to get me to touch her genitals. This sort of
- 8 thing never happened before her mother, Mary Beth, took her from our house
- 9 and out of my care.
- 10
- 11 6. The area where Mary Beth moved my daughter is one of the higher crime-
- 12 ridden areas of the city. Mary Beth has already stated that she could have
- 13 afforded to stay at our house, but now she is paying only rent, which is half of
- 14 our mortgage, and she believes that she no longer has to pay credit card
- 15 payments.
- 16
- 17 7. I called Mary Beth's mother to find out why our old church was asked to
- 18 discipline Mary Beth. Mary Beth's mother said it was because of the affair
- 19 with Ronnie.
- 20
- 21 8. Mary Beth lived with her sister after our separation but the ongoing affair
- 22 between Ronnie and Mary Beth led her sister to become concerned and that
- 23 led to Mary Beth moving out to continue on with her affair unabated.
- 24
- 25 9. Certainly, Mary Beth has lied openly to me about the existence of the affair
- 26 in order to conceal this unfit environment.
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STEPHEN LLOYD CLAYTON

SUBSCRIBED AND SWORN TO before me this 25th day of
July, 2002.

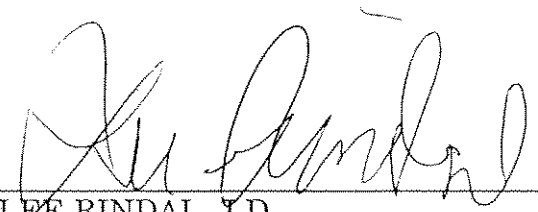


Kaili Busby
Kaili J. Busby
Notary Public for the State of MONTANA
Residing at Billings, Montana
My Commission Expires: June 5, 2004

CERTIFICATE OF MAILING

I, LEE RINDAL, do hereby certify that on the 19th day of
August, 2002, I served the foregoing on counsel for the petitioner in
person, by facsimile or by depositing the same in the U.S. Mails, postage prepaid
thereon, addressed as follows:

Tony Alback
Alback & Boschert, P.C.
208 North 29th Street, Suite 227
Billings, MT 59101


LEE RINDAL, J.D.

1 Lee Rindal
2 RINDAL LAW FIRM
3 926 Main Street, Suite 16
4 Billings, Montana 59105
5 (406) 252-2400
6 Attorney for Respondent
7

CLERK OF THE
DISTRICT COURT
JEAN A. THOMPSON
02 AUG 19 PM 4 00
FILED
BY _____
DEPUTY

8 **MONTANA THIRTEENTH JUDICIAL DISTRICT COURT**
9 **YELLOWSTONE COUNTY**

10 IN RE THE MARRIAGE OF:

11 MARY BETH CLAYTON,

12 Petitioner,

13 and

14 STEPHEN LLOYD CLAYTON,

15 Respondent.

Cause No. DR 02-0705

Judge DIANE G. BARZ

**MOTION FOR SHOW CAUSE
HEARING and BRIEF**

16 COMES NOW Respondent, STEPHEN LLOYD CLAYTON, by and through his
17 attorney, and in accordance with §40-4-213, M.C.A., moves the Court to set a Show
18 Cause Hearing to hear the matter to establish an interim parenting plan during
19 the pendency of this case. At this time, there is no parenting plan established. It
20 would be in the best interests of the minor child if a parenting plan were
21 established setting forth the specific parenting time to be enjoyed by the parties.
22

23 Respondent has submitted RESPONDENT'S PROPOSED INTERIM PARENTING
24 PLAN which is in the child's best interests and should be adopted as the interim
25 parenting plan.
26

27 This motion is further supported by the AFFIDAVIT OF STEPHEN LLOYD
28

1 CLAYTON which has been filed concurrently.

2
3 DATED this 19th day of AUGUST, 2002.

4
5 
LEE RINDAL

6 Attorney for Respondent

7
8
9 CERTIFICATE OF MAILING

10
11 I, LEE RINDAL, do hereby certify that on the 19th day of
12 August, 2002, I served the foregoing on counsel for the petitioner in
13 person, by facsimile or by depositing the same in the U.S. Mails, postage prepaid
14 thereon, addressed as follows:

15
16 Tony Alback
17 Alback & Boschert, P.C.
18 208 North 29th Street, Suite 227
19 Billings, MT 59101

20 
LEE RINDAL

21 Attorney for Respondent

CLERK OF THE
DISTRICT COURT
LAW A. THOMPSON
'02 AUG 19 PM 4 00
FILED
BY _____
DEPUTY

IN RE THE MARRIAGE OF: MARY BETH CLAYTON, Petitioner, and STEPHEN LLOYD CLAYTON, Respondent.	Cause No. DR 02-0705 Judge DIANE G. BARZ RESPONDENT'S PROPOSED INTERIM PARENTING PLAN
---	--

1. **IDENTIFICATION OF CHILD.** The parties have one (1) child born of the marriage, namely: Grace Marie Clayton, born February 18, 1999, currently age 3.

RESPONDENT
Mary Beth Clayton
617 North 25th Street
Billings, Montana 59101

p/1

- 1 A. Protect the child's best interests;
- 2
- 3 B. Provide for the physical care of the child;
- 4
- 5 C. Provide for the child's changing needs as she grows and matures;
- 6
- 7 D. Set forth the authority and responsibilities of the parties with
- 8 respect to the child;
- 9
- 10 E. Help to avoid expensive future Court battles over the child.

11 **4. RESIDENTIAL SCHEDULE FOR THE CHILD.**

- 12 A. The parents shall be designated joint caregivers of the child, with
- 13 FATHER being primary residential parent and MOTHER being
- 14 granted reasonable residential caregiving rights as follows:
 - 15 1. Every other weekend beginning Friday at 4 p.m., or when she
 - 16 gets off work and ending Sunday at 4 p.m.
 - 17
 - 18 2. Tuesday evening and Wednesday evening from 4 p.m. until 8
 - 19 p.m.
- 20 B. Each parent shall promote a healthy, beneficial relationship between
- 21 the child and the other parent and will not demean or speak or act out
- 22 negatively in any manner that would damage the natural flow of love
- 23 and caring between either parent and the child.
- 24
- 25 C. Each parent shall share important information about the child's
- 26 health, education, discipline and all aspects of the child's upbringing
- 27 with each other.
- 28

D. All times set forth below in the holiday schedule herein shall take precedence over the regularly scheduled residential periods set forth above. Unless otherwise mutually agreed to, the holiday schedule shall be as follows:

HOLIDAY	STEPHEN	MARY BETH
Memorial Day (to include 3 day weekend if school is not in session, to end no later than 8:00 p.m. on the last day)	Odd	Even
Father's Day	None	Every
4th of July	Even	Odd
Labor Day (to include 3 day weekend if school is not in session, to end no later than 8:00 p.m. on the last day)	Odd	Even
Halloween	Even	Odd
Thanksgiving (Thursday and Friday, commencing at 8:00 a.m. on Thursday at concluding at 8:00 p.m. on Friday)	Odd	Even
Christmas holiday break first half (commencing the afternoon school gets out until 8:00 a.m. December 25)	Even	Odd
Christmas holiday break second half (December 25, commencing at 8:00 a.m. until 8:00 p.m. on the evening before school recommences)	Odd	Even
New Year's Eve	Even	Odd
Father's Birthday	None	Every
Mother's Birthday	Every	None

5. **HEALTH INSURANCE.** MOTHER should provide and maintain health insurance for the parties' minor child. The parties shall share on a pro rata basis, as set forth in the child support guidelines any deductible or non-covered health or dental costs.

1 **6. EXCHANGING INFORMATION.** Both parties shall update each other
2 and the Court with written notice of changes to the following information:

- 3
- 4 A. Changes in residential and mailing addresses;
- 5 B. Changes in telephone numbers at home and at work;
- 6
- 7 C. Changes in names and addresses of employers;
- 8 D. Changes in health insurance coverage for the child; and
- 9 E. Changes in health insurance available through either parties'
- 10 employer which could cover the parties' child.

11

12 **7. RESIDENTIAL CHANGES SIGNIFICANTLY AFFECTING THE**
13 **CHILD.** If either parent's change of residence will significantly affect the
14 child's contact with the other parent, the parties shall follow the following
15 procedure:

- 16
- 17 A. The moving parent will:
- 18 1. Prepare with written notice of their intention to change
- 19 residences;
- 20 2. Prepare a proposed revised residential schedule;
- 21 3. Serve the non-moving parent personally or by certified mail not
- 22 less than 30 days before the proposed change of residence with
- 23 the written notice of intention to change residences and with the
- 24 proposed revised residential schedule; and
- 25 4. File proof of service upon the non-moving parent with the Court
- 26 named above.
- 27 B. If the non-moving parent fails to respond to the written notice of
- 28 intention to change residences and the proposed revised residential

1 schedule, then the non-moving parent will be deemed to have accepted
2 the proposed revised residential schedule.

3 D. If the non-moving parent objects to the proposed revised residential
4 schedule, the non-moving parent shall:

- 5 1. Prepare a response and serve the moving parent personally or
6 by certified mail within 30 days of receipt of the notice from the
7 moving parent;
- 8 2. The response may include an alternative proposed revised
9 residential schedule or state why the existing residential
10 schedule should continue; and
- 11 3. File proof of service upon the moving parent with the Court
12 named above.

13 D. If the parties cannot agree upon a revised residential schedule for the
14 child, they shall promptly make arrangements to mediate their
15 differences as provided below.

16 E. If the parties cannot agree upon a revised residential schedule for the
17 child after mediation, they may file appropriate petitions and motions
18 with the Court.

19 8. **ACCESS TO INFORMATION.** Both parties shall have equal access to all
20 information relating to their child including, but not limited to, school
21 records, counseling records and medical records.

22
23 9. **CHILD CUSTODY MEDIATION.** In the event the parties are unable to
24 resolve an important conflict between them regarding the child, they shall
25 seek the assistance of a neutral third party acceptable to both, and to try to
26 resolve the differences through confidential mediation. Petitioner shall pay
27 50% and Respondent shall pay 50% of the cost of such mediation.
28

- 1 **10. CHILD SUPPORT.** MOTHER shall pay FATHER monthly child support in
2 the amount of \$317.00as set forth in the attached Montana Child Support
3 Guidelines, with support recalculated annually on or before June 1 each year.
4
- 5 **11. INCOME TAX DEDUCTIONS.** FATHER shall claim the child as a
6 dependency deduction on his income tax returns in EVEN numbered years.
7 MOTHER shall claim the child as a dependency deduction on her income tax
8 returns in ODD numbered years.
9
- 10 **12. RIGHT OF FIRST REFUSAL.** Both parents have the right of first refusal
11 to provide care for their child if the other parent is unable to provide care. In
12 the event that either parent utilizes alternate care of their child, that parent
13 shall notify the other parent of the child needing to be cared for and the other
14 parent shall have the option of providing said care for the child during that
15 period. Both parents MUST notify the other parent when the child are being
16 watched by someone other than the parent. Both parents MUST provide the
17 careprovider's full name, address and telephone number to the other parent
18 prior to allowing the careprovider to care for the child.
19
- 20 **13. EFFECTIVE DATE.** It is the intent of FATHER that this Proposed Interim
21 Parenting Plan become effective as the final parenting plan upon its approval
22 by the District Court having jurisdiction over this proceeding.
23
- 24 **14. ENFORCEMENT.** This parenting plan shall be enforceable by any method
25 provided by law or equity. This parenting plan shall be binding upon the
26 parties, their personal representatives, heirs and assigns.
27
28

1 IN WITNESS WHEREOF, Respondent has executed this Proposed Interim
2 Parenting Plan.

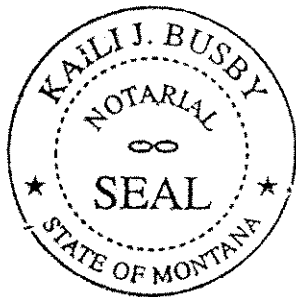
3
4 Dated: 7/25/02

[Signature]
STEPHEN CLAYTON, Respondent

5 STATE OF MONTANA)
6 : ss.
7 County of Yellowstone)

8 On this 25th day of July, 2002, before the undersigned,
9 a Notary Public, personally appeared STEPHEN CLAYTON, known to me to be
10 the person whose name is subscribed to the foregoing Proposed Parenting Plan
and acknowledged to me that the foregoing was executed freely and voluntarily.

11 IN WITNESS WHEREOF, I have hereunto set my hand and affixed my
12 Notarial Seal on the date in this certificate first above written.



Kaili J. Busby
Kaili J. Busby
Notary Public for the State of MONTANA
Residing at Billings, Montana
My Commission Expires: June 5, 2004

Worksheet A

A X B

Father's name Stephen Clayton

Name	Date of Birth
Grace Marie Clayton	2/18/99

Name	Date of Birth

MOTHER		FATHER	
\$	23,000	\$	400
			136
	23,000		536
	2,618		
	841		
	1,760		31
	5,219		31
\$	17,781	\$	505

	MOTHER	FATHER
3a. Enter amount from line 3 for each parent	\$ 17,781	\$ 505
4. Personal allowance for each parent (from Table 1)	11,167	11,167
5. Income available for child support (line 3a minus line 4; if less than zero, enter zero)	6,614	0
6. If line 5 is zero, enter the minimum contribution (from WS-C). If line 5 is greater than zero, multiply line 3 by .12 (12%) and enter the result here	2,134	0
7. For each parent, compare line 5 to line 6 and enter the greater amount	6,614	0
8. Combined income available (add both columns, line 7)	6,614	
9. Parental share of combined income available (divide each column of line 7 by line 8)	100%	0%
10. Number of children due support in this calculation	1	
11. Primary child support allowance for number of children in line 10 (from table 2)	3,350	
12. Supplement to primary allowance (combine annual expenses of mother, father and third party custodian, if applicable)		
a. Child daycare costs less dependent care tax credit	0	
b. Child health insurance premium	0	
c. Child extraordinary medical expenses	0	
d. Other	0	
e. Total supplement (add 12a, 12b, 12c and 12d)	0	
13. Total primary allowance and supplement (add lines 11 and 12e)	3,350	
14. For each parent: if line 6 is greater than line 5, skip to line 21 and enter the amount from line 6. If line 6 is less than line 5, go to line 15.		
15. Parent's share of total (for each column, multiply line 13 by line 9)	3,350	0
16. Compare line 15 to line 5. Enter the smaller amount here.	3,350	0
17. Income available for SOLA (line 5 minus line 16; if zero, enter zero and skip to line 21)	3,264	0
18. Adjustments to income available for SOLA:		
a. Long distance parenting adjustment (from Worksheet D)	0	0
b. Other (specify) _____	0	0
19. Adjusted income available for SOLA (line 17 minus line 18a and 18b)	3,264	
20. SOLA amount (from Worksheet E)	457	0

	MOTHER	FATHER
21. Add line 16 and line 20	\$ 3,807	\$ 0
22. Gross annual obligation (for each parent compare line 21 to line 6; enter the larger amount)	<u>3,807</u>	<u>0</u>
23. Credit for payment of expenses (enter amount of line 12 expenses that each parent pays)	<u>0</u>	<u>0</u>
24. Net annual obligation (line 22 minus line 23; if less than zero, enter zero)	<u>3,807</u>	<u>0</u>
25. Enter the number of days each child spends with each parent annually in columns A and B. Determine if all of the children spend 110 days or less with the same parent. (Do all the children reside primarily with the same parent and spend 110 days or less with the other parent?) If YES, divide the line 24 obligation for the parent who cares for the children 110 days or less by the number of children on line 10. Enter the result in column C or D (depending on which parent's obligation is being divided) for each child. Leave the other parent's column blank. If NO, complete worksheet B.		

	A	B		C	D
Child's Name	Mother	Father		Mother	Father
a. <u>Grace Marie</u>	<u>110.0</u>	<u>255.0</u>	= 365	<u>3,807</u>	
b. _____			= 365		
c. _____			= 365		
d. _____			= 365		
e. _____			= 365		
f. _____			= 365		
g. _____			= 365		
h. _____			= 365		
i. Total Obligation (add lines 25a through 25h)				<u>3,807</u>	
26. Determine the difference between line 25i column C and line 25i column D. Enter the difference in the column of the parent having the higher obligation.					
				<u>3,807</u>	
27. Total monthly transfer payment (line 26 divided by 12)					
				<u>317</u>	

THIS IS A STANDARD CALCULATION. ANY ADJUSTMENT TO THE OBLIGATION
IS SUPPORTED BY WRITTEN FINDINGS.

COMMENTS:

Rindal Law Firm

PREPARED BY

7/25/02

DATE

SUPPLEMENTARY INFORMATION

Cause/Case number DR 02-0705

User Reference Clayton

Mother's name Mary Beth Clayton

Report Date 7/25/02

Father's name Stephen Clayton

Child's Name	Daycare		Health Insurance		Other Medical		Other		Monthly Obligation	
	Mother	Father	Mother	Father	Mother	Father	Mother	Father	Mother	Father
<u>Grace Marie</u>									<u>317</u>	

	Mother	Father
1. For dep care tax credit the annual amount of child care costs that each parent will claim		
2. For dep care tax credit the number of children of this computation under 13 years of age		
3. For dep care tax credit the annual amount of child care costs for other children		
4. Number of children not of this computation that will be claimed for dep care tax credit		
5. Number of personal exemptions each individual will claim in the next reporting period	<u>1</u>	<u>2</u>
6. Marital status of each parent	<u>Single</u>	<u>Single</u>
7. For the determination of Earned Income Credit the amount of earned income	<u>23,000</u>	<u>400</u>
8. For the determination of Earned Income Credit the number of qualifying children		<u>1</u>
9. For the determination of Earned Income Credit the number of other qualifying children		
10. For the determination of Child Tax Credit the number of qualifying children		<u>1</u>
11. For the determination of Child Tax Credit the number of other qualifying children		
12. Railroad Tier II tax computation	<u>No</u>	<u>No</u>
13. Mandatory retirement contribution (after tax contribution)		
14. Mandatory deferred compensation (before tax contribution)		
15. Annual mileage driven to exercise long-distance parenting		
16. Annual cost of transportation by means other than automobile		
17. Number of OTHER children for allowance		

CSW01.2

1 Lee Rindal
2 RINDAL LAW FIRM
3 926 Main Street, Suite 16
4 Billings, Montana 59105
(406) 252-2400
(406) 252-0068 fax

5 Attorney for Respondent

CLERK OF THE
DISTRICT COURT
JEAN A. THOMPSON

02 AUG 29 AM 9 30

BY _____
DEPUTY

6
7
8 MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
9 YELLOWSTONE COUNTY

10 IN RE THE MARRIAGE OF:
11 MARY BETH CLAYTON,
12
13 and
14 STEPHEN LLOYD CLAYTON,
15 Respondent.

Cause No. DR 02-0705
Judge DIANE G. BARZ

AFFIDAVIT OF STEPHEN LLOYD
CLAYTON

16 STATE OF MONTANA)
17 : ss.
County of Yellowstone)

18 STEPHEN LLOYD CLAYTON, having been duly sworn, deposes and says:

- 19
20 1. I am attending Montana State University-Billings as a full-time student. I
21 am a graduate student majoring in Public Relations. Even though I have
22 only recently chosen this line of study, I had been planning to attend
23 graduate school for some time since a history degree is generally considered a
24 first step in higher learning. I have attached a copy of my schedule.
25
26 2. The last full-time semester, Spring 2002, I was an undergraduate student
27 majoring in History. I obtained a BA in History after completing a summer
28 history workshop.

- 1 3. On my first day of this final class, my wife took my child and went to live
2 with her sister across town and into the arms of her lover, Ronnie. It seemed
3 to me that she wished to sabotage my obtaining my degree. I earned an A
4 despite her attempt.
5
- 6 4. I decided on a Public Relations degree since I will be able to obtain it as an
7 online student in order to spend more time with my daughter over the period
8 it takes to complete my degree. The degree will also make it much easier to
9 get a good paying career.
10
- 11 5. My wife has put my daughter behind my wife's lover in the order of priorities.
12 While my daughter lived with me and my wife, she would only be up until 8
13 p.m. My wife recently told me that she is now "allowed" to stay up until 10
14 p.m. even though she is only 3 years old. My wife is constantly over at her
15 lover's home and wishes to spend as much time with her lover and keeps my
16 daughter up to do so.
17
- 18 6. My wife has been living with my daughter in three different residences in the
19 last three months. All this moving around must be very unsettling to my
20 daughter. My daughter spent her entire life in the house I live in. Here, she
21 has her own room, her dog and her cat. Unlike her mother, I offer stability.
22
- 23 7. My wife's lover has two small children and my daughter has to share her
24 mother's love between the lover and his two children. I will be giving her all
25 the attention that she so desperately needs at this difficult time.
26
- 27 8. I have a stable family life. My wife has been estranged from her family for
28

1 the last two years. She also knowingly allowed her father, a known child
2 incest sexual abuser, to be with my daughter at least three times since all of
3 his incest sexual abuse of my wife and her sisters came out in the open. One
4 of my wife's sister has left the family and changed her first and last name
5 just to separate herself from her abusive family. This sister has also hired an
6 attorney to keep her entire family away from her.

8 9. During the Spring semester of 2002, I carried 19 credit hours and worked 15
9 hours per week as an archive intern at MSU-B. I was also Vice-President of
10 Phi Alpha Theta, the History Honor Society. I also traveled to Spokane,
11 Washington, to present historical research that I had compiled over the
12 course of the semester. My wife requested, on top of all my school work and
13 part-time employment through the college, that I should also work full-time
14 at night.

16 10. On May 5, 2002, my wife told me that she wanted me dead. While traveling
17 to present my paper in Spokane, Washington, she hoped that I would die in a
18 car wreck. She told me she felt bad about that wish for me to die in a car
19 accident not because of my dying, but because there would be others in the
20 car.

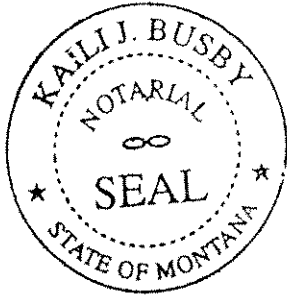
22 11. Days after our separation, she told me that she had talked to the police about
23 her wanting me dead to cover herself in case I happened to die.

25 12. After she told me about wanting me dead, I changed my beneficiary status on
26 my newly purchased life insurance policies. If I died, she would have
27 received \$225,000 in compensation.
28

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STEPHEN LLOYD CLAYTON

SUBSCRIBED AND SWORN TO before me this 21st day of
August, 2002.

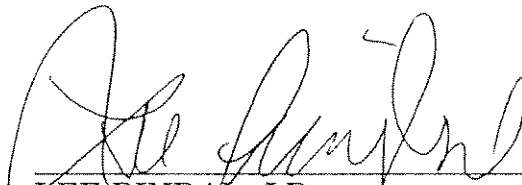


Kaili J. Busby
Kaili J. Busby
Notary Public for the State of MONTANA
Residing at Billings, Montana
My Commission Expires: June 5, 2004

CERTIFICATE OF MAILING

I, LEE RINDAL, do hereby certify that on the 28th day of
August, 2002, I served the foregoing on counsel for the petitioner in
person, by facsimile or by depositing the same in the U.S. Mails, postage prepaid
thereon, addressed as follows:

Tony Alback
Alback & Boschert, P.C.
208 North 29th Street, Suite 227
Billings, MT 59101


LEE RINDAL, J.D.

27-AUG-2002 08:09:32
200270

Montana State University
Student Schedule
Fall 2002

PAGE 1
SFRSCHD

Clayton, Stephen Lloyd
1654 Brewington Drive
Billings, MT 59105

-00057296

<u>P/T</u>	<u>CRN</u>	<u>SUBJ</u>	<u>CRSE</u>	<u>SECT</u>	<u>CMP</u>	<u>TITLE</u>	<u>CREDS</u>	<u>LV</u>	<u>ST</u>	<u>DAYS</u>	<u>TIME</u>	<u>BUILD</u>	<u>ROOM</u>	<u>INSTRUCTOR</u>
1	71601	COMT	110	008	L	Interpersonal Comm	3.00	UG	RW	TR	0340-0510pm	LA	311	STAFF
1	71606	COMT	320	800	L	Media and Society	3.00	UG	RE	TBA	TBA	ONLINE	WEB	Pugh R
1	71905	COMT	425	800	L	Media Effects	3.00	UG	RE	TBA	TBA	ONLINE	WEB	Gross D
1	72082	COMT	420	800	L	Media Advertising	3.00	UG	RE	TBA	TBA	ONLINE	WEB	Pugh R

CREDITS 12.00 CEUS .00

RECEIVED SEP - 5 2002
COPY

1 **Toby Alback**
2 **ALBACK & BOSCHERT, P.C.**
3 208 North 29th Street, Suite 227
4 Billings, MT 59101
5 Telephone: (406) 252-4221

6 Attorney for Petitioner/Wife

7 **MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,**
8 **YELLOWSTONE COUNTY**

9 **IN RE THE MARRIAGE OF**)

10 **MARY BETH CLAYTON,**)

11 **Petitioner,**)

12 **v.**)

13 **STEPHEN LLOYD CLAYTON,**)

14 **Respondent.**)

CAUSE NO.: DR02-0705

JUDGE: DIANE G. BARZ

AFFIDAVIT OF
MARY BETH CLAYTON

15 **STATE OF MONTANA)**

16 **: ss.**

17 **County of Yellowstone)**

18 **MARY BETH CLAYTON, being first duly sworn under oath states and avers as**
19 **follows:**

- 20 1. That I am of legal age and a resident of Billings, Yellowstone County, Montana.
- 21 2. That I am the Petitioner in the above-entitled action.
- 22 3. That, on the 3rd day of June, 2002, my husband and I separated. At the time of
- 23 our separation, my daughter and I moved in with my sister, Jozy Kline and resided with her
- until July 7, 2002 at which time I moved into my residence at 617 North 25 St., Apt. #2,
- Billings, Montana 59101. My daughter and I have resided in said residence from that date

1 forward and continue to reside there as of the date of this affidavit. No other persons reside in
2 said residence, save for my daughter and me.

3 4. That, my residence is a two-bedroom apartment and, as such, my daughter,
4 Grace, has her own bedroom and her own bed and is surrounded by her toys, clothes and other
5 personal property items consistent with a girl of her age.

6 5. That, since my daughter's birth on February 18, 1999, I have been the primary caretaker
7 and care provider to my said daughter. When my daughter was approximately six (6) months
8 of age, I started taking her to day care provided by Alice Mills. At the time Grace began
9 attending day care, my husband was employed. However, his employment ceased within
10 approximately 4 to 6 weeks after she began attending day care and, despite such fact, she
11 continued in day care because he refused to care for her during the day.

12 6. My daughter continues to attend day care provided by Alice Mills to this day.

13 7. That, at the time I filed for a dissolution of marriage herein, I instructed my
14 attorney to prepare a Proposed Parenting Plan which provided for "liberal and reasonable
15 visitation" of our daughter by her father, Respondent herein. That my proposal for such
16 visitation was based upon my belief that it would be in our child's best interest for her to have
17 regular and frequent contact with her father.

18 8. That, subsequently, I have become concerned about such visitation based upon
19 comments made to me by my daughter. For example, on more than one occasion, she has
20 expressed to me that "Mommy, you hurt Daddy's heart". On other occasions, she has told me
21 that "Papa [meaning Respondent's father] doesn't like you" and "Grandma hates you". I can
22 only conclude that these comments are echoes of statements my daughter has been told by her
23 father, Respondent herein.

1 9. On another occasion, my daughter told me that "Daddy cut you out of the
2 picture". On another occasion as I was returning to my home with my daughter after picking
3 her up from her father's home, Grace told me that "He cut your head off. He poked out your
4 eyes". When I asked her what that meant, she told me "Daddy cut you out of the picture.
5 Subsequently, when I picked my daughter up from her father's home, I saw a family picture
6 from which my head had been cut out and removed.

7 10. That, on various when my daughter and I have been driving toward
8 Respondent's home, my daughter has become upset and begun crying and has stated to me that
9 "she doesn't want to live with Daddy Stephen" and "I want to go home with you to live in our
10 new house".

11 11. That, at various times in the past, Respondent has experienced and suffered from
12 severe depression and has been treated by counseling and medication.

13 12. That, at various times in the past, Respondent has told me that he has been
14 suicidal and has contemplated having an "accident to end it all".

15 13. That, based upon Respondent's background and history of depression and his
16 comments indicating that he has been suicidal, I am concerned that Respondent's current
17 mental and emotional condition is such that it will prove detrimental to my daughter if she is
18 placed in his care, custody and control for extended periods of time.

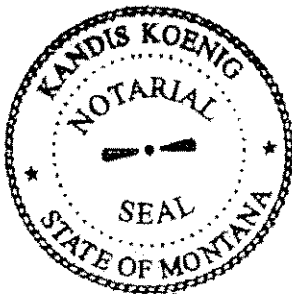
19 14. That, filed herewith is a Proposed Amended Parenting Plan which I believe is in
20 the best interest of our minor child, Grace Marie Clayton.

21 FURTHER AFFIANT SAYETH NAUGHT.

22 DATED this 3rd day of September, 2002.

Mary Beth Clayton
MARY BETH CLAYTON

SUBSCRIBED AND SWORN TO before me this 3 day of September, 2002.



Kandis Koenig
Notary Public for the State of MT;
Residing at Billings, Montana; My
Commission expires: 2-15-2006
Name Printed: Kandis Koenig

COPY

Toby Alback
ALBACK & BOSCHERT, P.C.
 227 Hedden-Empire Building
 208 North 29th Street
 Billings, MT 59101
 Telephone: (406) 252-4221

Attorney for Petitioner/Mother

**MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,
 YELLOWSTONE COUNTY**

IN RE THE MARRIAGE OF

MARY BETH KLINE CLAYTON,

Petitioner,

v.

STEPHEN LLOYD CLAYTON,

Respondent.

CAUSE NO.: DR02-0705

JUDGE: DIANE G. BARZ

**PETITIONERS AMENDED
 PROPOSED PARENTING PLAN**

COMES NOW, Petitioner/Mother, and hereby makes and proposes the following amended parenting plan for the parenting plan of the minor child of the parties:

1. IDENTIFICATION OF CHILD: The parties have one minor child, namely **GRACE MARIE CLAYTON**, age 3, born February 18, 1999, which said minor child is the natural child of Petitioner/Mother and Respondent/Father. The minor child currently resides with Petitioner/Mother in Billings, Montana.

2. RESIDENCY OF PARENTS: The legal residences of the parties are:

MARY BETH KLINE CLAYTON
 Billings, Montana, 59101

1 **STEPHEN LLOYD CLAYTON**
2 1654 Brewington
3 Billings, Montana

3 **3. OBJECTIVES OF PARENTING PLAN:** This plan is intended to:

- 4 A. Protect our minor child's best interests;
5 B. Provide for the physical care of our child;
6 C. Provide for our child's changing needs as she grows and matures;
7 D. Set forth our authority and responsibilities with respect to our minor child;
8 E. Help us avoid expensive future court battles over our child.

9 **4. RESIDENTIAL SCHEDULE FOR THE CHILD:** Both parties have important
10 roles to play in our child's development. Petitioner/Mother therefore proposes the following terms
11 for sharing time with our child.

12 The minor child shall with the Petitioner/Mother allowing liberal visitation with
13 Respondent/Husband. Said liberal visitation shall consists of the following specific visitation
14 schedule:

15 Father shall be entitled to one weeknight visitation per week, on a day of his choosing
16 during the period from 4:00 p.m. through 8:00 p.m. In addition, Father shall be entitled to
17 visitation/custody of said minor child every other weekend from Friday at 4:00 p.m. through
18 Sunday evening at 6:00 p.m.

19 In addition, the parties shall alternate custody of the minor child on the following
20 holidays as indicated:

<u>Holiday</u>	<u>Mother</u>	<u>Father</u>
Christmas Eve	Odd Years	Even Years
Christmas Day	Even Years	Odd Years
New Year's Day	Odd Years	Even Years
Memorial Day	Even Years	Odd Years

1	Independence Day	Odd Years	Even Years
	Thanksgiving	Even Years	Odd Years
2	Mother's Birthday	Every Year	
	Father's Birthday		Odd Years
3	Mother's Day	Every Year	
	Father's Day		Every Years
4	Child's Birthday	Even Years	Odd Years

5
6 A. Each parent specifically agrees to provide an environment for their minor
7 child which is safe, secure, clean and conducive to the physical, mental, emotional and spiritual
8 well being of such child.

9 B. Each parent specifically agrees to promote a healthy beneficial relationship
10 between the minor child and the other parent and shall not demean or speak or act negatively in
11 any manner that would damage the natural flow of love and caring between either parent and the
12 minor child.

13 C. Each parent should share important information about the minor child's
14 health, education, discipline and all aspects of said minor child's upbringing with the other parent.

15 5. **EXCHANGING INFORMATION:** Both parties should be required to update
16 each other and the Court with written notice of changes in the following information:

- 17 A. Changes in residential and mailing addresses;
18 B. Changes of telephone numbers at home and at work;
19 C. Changes in names and addresses of employers;
20 D. Changes in health insurance coverage for the minor child; and
21 E. Changes in health insurance available through either party's employer
22 which could cover the party's minor child.
23

1 **6. RESIDENTIAL CHANGES SIGNIFICANTLY AFFECTING THE CHILD:**

2 If either parent's change of residence will significantly affect the child's contact with the other
3 parent, the parties should be required to follow the following procedure:

4 A. The moving parent will:

- 5 i) Prepare a written notice of his/her intention to change residences;
6 ii) Prepare a proposed revised residential schedule;
7 iii) Serve the non-moving parent personally or by certified mail not
8 less than 30 days before the proposed change of residence with the
9 written notice of intention to change residences and with the
10 proposed revised residential schedule; and
11 iv) File proof of service upon the non-moving parent with the Court
12 named above.

13 B. If the non-moving parent fails to respond to the written notice of intention
14 to change residences and the proposed revised residential schedule, then the non-moving parent
15 will be deemed to have accepted the proposed revised residential schedule.

16 C. If the non-moving parent objects to the proposed revised residential
17 schedule, the non-moving parent shall:

- 18 i) Prepare an alternative proposed revised residential schedule which
19 may state why the existing residential schedule should continue;
20 ii) Serve the moving parent personally or by certified mail with the
21 alternative proposed revised residential schedule within 30 days of
22 receipt of moving parent's notice; and
23

1 iii) File proof of service upon the moving parent with the Court named
2 above.

3 D. If the parties cannot agree upon a revised residential schedule for the child,
4 they shall promptly make arrangements to mediate their differences as provided below.

5 E. If the parties cannot agree upon a revised residential schedule for the child
6 after mediation, they may file appropriate petitions and motions with the Court.

7 7. **ACCESS TO INFORMATION:** Both parties shall have equal access to all
8 information relating to said minor child including, but not limited to, school records, counseling
9 records, and medical records.

10 8. **CHILD CUSTODY MEDIATION:** Petitioner/Mother proposes that in the event
11 the parties are unable to resolve an important conflict between them regarding our child, we
12 should be required to seek the assistance of a neutral third party acceptable to both of us, and to try
13 to resolve our differences through confidential mediation. Respondent and Petitioner/Mother
14 should share the cost of such mediation equally.

15 9. **CHILD SUPPORT:** Petitioner/Mother requests that Respondent/Father be
16 required to pay child support in an amount determined by application of the Montana Child
17 Support Guidelines.

18 10. **INSURANCE:** Petitioner/Mother requests that the matter of medical support be
19 required as set out in the Petition for Dissolution of Marriage filed herein.

20 11. **FUTURE INSTRUMENTS:** Each party should be required to promptly execute
21 and deliver to the other any and all future documents and instruments and to perform all acts
22 which may be necessary to carry into full force and affect the terms of this parenting plan.
23

12. **ATTORNEYS FEES:** Petitioner/Mother proposes that in the event of future litigation between the parties to enforce, modify, or interpret any provision of this parenting plan, the prevailing party shall be entitled to all his or her court costs, including a reasonable attorney's fee and reimbursement of any costs for unsuccessful mediation.

13. **ENFORCEMENT:** Petitioner/Mother proposes that this parenting plan become effective and adopted as the Interim Parenting Plan upon its approval by the District Court having jurisdiction over this proceeding for dissolution of marriage.

14. DECLARATION FOR PROPOSED PARENTING PLAN:

Petitioner/Mother declares under penalty of perjury under the laws of the State of Montana that this proposed plan has been proposed in good faith and the statements in this proposed plan are true and correct. That Petitioner/Mother and Respondent/Father had previously discussed the issue of parenting their child from time to time since their separation and Petitioner/Mother had structured her original Proposed Preliminary Parenting Plan filed herein in conformance with the agreements she and Respondent/Father had expressed and agreed to in such conversations. However, by virtue of the pleadings filed herein by Respondent/Father, it is apparent that Respondent does not intend to abide by the agreements previously reached and, therefore, Petitioner is left with no alternative other than to ask the Court to adopt the parenting plan proposed herein.

DATED this 5 day of September, 2002.

MARY BETH CLAYTON

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CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed, postage pre-paid, to the following opposing counsel of record at the address listed below:

Lee Rindal
RINDAL LAW FIRM
926 Main Street
Billings, Montana 59105

DATED this 5th day of September, 2002.

By: Susan M. Martinez

COPY

Toby Alback
ALBACK & BOSCHERT, P.C.
 208 North 29th Street, Suite 227
 Billings, MT 59101
 Telephone: (406) 252-4221

Attorney for Petitioner/Wife

**MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,
 YELLOWSTONE COUNTY**

IN RE THE MARRIAGE OF)

MARY BETH CLAYTON,)

Petitioner,)

v.)

STEPHEN LLOYD CLAYTON,)

Respondent.)

CAUSE NO.: DR02-0705

JUDGE: DIANE G. BARZ

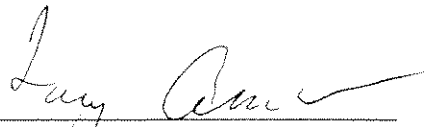
**PETITIONER'S RESPONSE TO RESPONDENT'S MOTION FOR
 SHOW CAUSE HEARING, PETITIONER'S MOTION TO ADOPT
 PRELIMINARY AMENDED PARENTING PLAN AND FOR
 CHILD SUPPORT ORDER**

COMES NOW, Petitioner, by and through her counsel of record and hereby enters her response and objection to Respondent's Motion For Show Cause Hearing in which Respondent asks the Court to adopt Respondent's Proposed Interim Parenting Plan as the interim parenting plan during the pendency of this action.

In addition, Petitioner moves this Court for its Order adopting Petitioner's Preliminary Amended Parenting Plan filed herewith as the interim parenting plan during the pendency of this action and, further, moves the Court for its Order establishing temporary child support pursuant to Petitioner's child support calculations filed herewith.

1 This Response and Motion is supported by the Affidavit of Petitioner and Petitioner's
2 Brief filed herewith.

3 DATED this 4th day of September, 2002.

4 
5 **TOBY ALBACK**
6 **Attorney for Petitioner**

7 **CERTIFICATE OF MAILING**

8 I hereby certify that a true and correct copy of the foregoing was mailed, postage pre-
9 paid, to the following opposing counsel of record at the address listed below:

10 Lee Rindal
11 RINDAL LAW FIRM
12 926 Main Street
13 Billings, Montana 59105

14 DATED this 4th day of September, 2002.

15 By: 
16
17
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22
23

RECEIVED SEP 11 2002

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

IN RE THE MARRIAGE OF:

MARY BETH CLAYTON,

Petitioner,

and

STEPHEN LLOYD CLAYTON,

Respondent.

Cause No.: DR-02-0705

Judge: Diane G. Barz

ORDER

**Re: INTERIM PARENTING PLAN
AND SETTING HEARING**

Both parties having responded to the Court's Order of August 23, 2002, through their attorneys, **THE COURT ORDERS AS FOLLOWS:**

1. **The Court will adopt** the Petitioner's Amended Proposed Parenting Plan effective immediately, until the hearing.

2. A **hearing** on the Interim Parenting Plan is **SET** for September 24, 2002, at 9:00 o'clock A.M., Courtroom #518, Yellowstone County Courthouse, Billings, Montana. Each party shall have thirty (3) minutes, including cross-examination. No other witnesses except the parties can testify.

The parties need to have their Child Support Calculations completed.

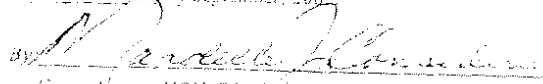
DATED this 10 day of September, 2002.

cc: Lee Rindal, Esq.
Toby Alback, Esq.


HON. DIANE G. BARZ, DISTRICT JUDGE

CERTIFICATE OF SERVICE

This is to certify that the foregoing was duly served by mail or by hand upon the parties or their attorneys of record at their last known address on this

10 day of September, 2002.
by 
Court Clerk to HON. DIANE G. BARZ

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7 **MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,**
8 **YELLOWSTONE COUNTY**

9 **IN RE THE MARRIAGE OF**)

10 **MARY BETH CLAYTON,**)

11 **Petitioner,**)

12 **v.**)

13 **STEPHEN LLOYD CLAYTON,**)

14 **Respondent.**)

CAUSE NO.: DR02-0705

JUDGE: DIANE G. BARZ

15 **ORDER ADOPTING TEMPORARY PARENTING PLAN**

16 THIS MATTER came on for Show Cause Hearing before the Court on the 29th day of
17 September 2002. Petitioner was present in person along with Toby Alback, her counsel of
18 record. Respondent appeared in person along with his attorney, Lee Rindal. Testimony of
19 Petitioner and Respondent was presented to the Court and, after consideration of such
20 testimony and evidence presented at hearing,

21 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:**

- 22 1. The Court hereby orders that the Petitioner's Proposed Amended Parenting Plan
23 filed herein is hereby adopted as the Interim Parenting Plan as to the care, custody and control

1 of the parties' minor child during the pendency of this action, provided, however, that
2 Petitioner's Amended Proposed Parenting Time shall be amended to allow Respondent/Father
3 the following visitation schedule with the minor child:

4 Father shall be entitled to two (2) weeknight visitations with the minor
5 child per week, on days of his choosing during the period from 4:00 p.m.
6 through 8:00 p.m. In addition, Father shall be entitled to visitation/custody of
said minor child every other weekend from Friday at 4:00 p.m. through Sunday
evening at 6:00 p.m.

7 IT IS SO ORDERED.

8 DATED this 15 day of October, 2002.

9
10 DIANE G. BARZ
11 **DIANE G. BARZ**
District Court Judge

12 cc: Lee Rindal, Esq.
13 Toby Alback, Esq.

14 CERTIFICATE OF SERVICE

15 This is to certify that the foregoing
16 was duly served by mail upon the
parties or their attorneys of record
at their last known address this
17 12 day of Oct,
20 02.

Honorable Diane G. Barz

By Mardelle J. Considine

1 MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
2 YELLOWSTONE COUNTY

3 IN RE THE MARRIAGE OF:
4 MARY BETH CLAYTON,

No. DR 02-0705

5 Petitioner/Respondent,

6 and

7 STEPHEN LLOYD CLAYTON,

8 Respondent/Appellant.
9

COPY

10
11 TRANSCRIPT OF PROCEEDINGS

12 Courtroom - Dept. No. 1
13 Yellowstone County Courthouse
14 Billings, Montana
June 18, 2003
1:30 p.m.

15 HONORABLE DIANE G. BARZ, PRESIDING JUDGE

16 APPEARANCES

17 For the Petitioner:

ALBACK & BOSCHERT
by TONY ALBACK
208 North 29th Street, Ste. 227
Billings, MT 59101

19 For the Respondent:

RINDAL LAW OFFICE
by LEE RINDAL
926 Main Street, Ste. 16
Billings, MT 59105

22
23 CONDENSED

24
25 TRANSCRIPT

STEPHANIE MICHELS, RPR, RMR
OFFICIAL COURT REPORTER
P.O. BOX 20577
BILLINGS, MT 59101
Courthouse 406-256-2722
office 406-656-3355

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4

1 MARY BETH CLAYTON,

2 called as a witness and having been first duly sworn, was

3 examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. ALBACK:

6 Q. All right. Would you state your name, please?

7 A. Mary Elizabeth Clayton.

8 Q. Ms. Clayton, where do you reside?

9 A. 617 North 25th Street, Apartment 2, in Billings.

10 Q. And you are the petitioner in this action; is that

11 right?

12 A. Yes.

13 Q. Okay. You read the petition that I filed on your

14 behalf in this matter prior to my filing it, right?

15 A. Yes.

16 Q. And were the matters contained in that petition

17 true and accurate?

18 A. Yes.

19 Q. Okay. You resided in the State of Montana for 90

20 days immediately prior to the filing of the petition; is that

21 right?

22 A. Yes.

23 Q. Okay. Is the marriage -- in your opinion, is your

24 marriage to Mr. Clayton irretrievably broken?

25 A. Yes.

3

1 PROCEEDINGS

2 June 18, 2003, 1:30 p.m.

3 THE COURT: Good afternoon. Court is in session.

4 You may be seated.

5 This is the time the Court has set aside for

6 hearing in Cause No. DR 02-075. The record will show that

7 both the petitioner and the respondent are present in the

8 courtroom with their respective attorneys.

9 Mr. Alback, you are the petitioner's attorney and

10 you may proceed.

11 MR. ALBACK: Thank you, Your Honor. Your Honor,

12 the petition calls Mary Beth Clayton to the stand.

13 (Witness was sworn.)

14 MR. ALBACK: Your Honor, before we begin, I'd like

15 to represent to the Court that the parties have agreed to a

16 distribution of the personal assets, personal property items.

17 And in that regard, the assets -- those assets will

18 be distributed between the parties on -- as per the proposed

19 asset distribution that Mr. Rindal has presented to the

20 Court.

21 And so I just wanted to let you know that my client

22 is in agreement with that, so we won't be addressing any of

23 those issues at this hearing.

24 THE COURT: Thank you.

25 ///

5

1 Q. And is there any prospect of reconciliation?

2 A. No.

3 Q. You and Mr. Clayton have you been separated since

4 June 3rd, 2003; isn't that right?

5 A. Of 2002.

6 Q. Or, I'm sorry, 2002.

7 Okay. And the two of you have one child?

8 A. Yes.

9 Q. And who is that?

10 A. Grace Marie.

11 Q. How old is Grace?

12 A. She is four.

13 Q. Okay. You are not now pregnant; is that right?

14 A. No.

15 Q. Okay. Is it your desire that after hearing that

16 your name be changed to your former maiden name?

17 A. No.

18 Q. All right. And is it your desire that after the

19 hearing of this matter that the Court enter a decree of

20 dissolution of your marriage to Mr. Clayton?

21 A. Yes.

22 Q. I'd like to talk to you now about the parenting

23 plan issues before the Court. You recall, do you not, that

24 back in September of 2002 this matter was before the Court in

25 regard to an interim parenting plan matter?

1 A. Yes.
 2 Q. And you recall that after that hearing that
 3 Judge Barz entered an order that established an interim
 4 parenting plan?
 5 A. Yes.
 6 Q. And that interim parenting plan provided that
 7 Mr. Clayton would have every other weekend with your daughter
 8 and two evenings per week; is that correct?
 9 A. Yes.
 10 Q. Okay. And has that parenting plan been followed
 11 since the time of the entry of it by the Court?
 12 A. Yes.
 13 Q. And has that parenting plan worked sufficiently in
 14 your opinion since that time?
 15 A. Yes.
 16 Q. You also recall -- I assume you recall that
 17 Judge Barz also strongly recommended in court that you and
 18 Mr. Clayton attend parenting classes. Have you done so?
 19 A. Yes.
 20 Q. Where did you attend those classes?
 21 A. Through Yellowstone Rehabilitation at MSU.
 22 Q. And when did that occur?
 23 A. In November or December.
 24 Q. Okay. And could you tell the Court briefly what
 25 type of things were addressed by the transparenting classes?

1 A. How to minimize the effects of a conflict, such as
 2 divorce on a child, and how to deal with the issues of
 3 divorce with the other parent without it negatively affecting
 4 the child.
 5 Q. Did you learn some things through those classes --
 6 A. I did.
 7 Q. -- that have been of assistance to you in dealing
 8 with Grace?
 9 A. Yes.
 10 Q. And how about in assistance to you in dealing with
 11 Mr. Clayton?
 12 A. I believe so.
 13 Q. Okay. Have you tried to utilize any of those
 14 things in your dealings with Mr. Clayton?
 15 A. I have.
 16 Q. For example?
 17 A. I have done correspondence via e-mail instead of
 18 trying to discuss things in front of Grace that could be
 19 disruptive to her mental well-being.
 20 Q. How has Mr. Clayton responded to those type of
 21 entrees from you?
 22 A. He was rather unhappy about it, he seemed to think
 23 that I wasn't willing to talk to him in person. So from then
 24 on he pretty well shut the door in my face or walk away
 25 during drop off times.

1 Q. To your knowledge, has Mr. Clayton taken the
 2 transparenting classes?
 3 A. Not that I'm aware of.
 4 Q. Have you sought any other parenting or counseling
 5 assistance in regard to your daughter and this divorce
 6 proceeding?
 7 A. Based on the recommendations of the people at
 8 Yellowstone Rehabilitation, I sought counseling with Mary
 9 Macki with Custody Consultants for Grace as well as myself.
 10 Q. Okay. And how long have you been seeing Mary
 11 Macki?
 12 A. We have gone for nine or ten sessions. It started
 13 back in February, I believe.
 14 Q. And have those sessions been with you and Grace
 15 jointly with Mary Macki, or Grace alone or you alone or --
 16 A. It has been with both of us with her.
 17 Q. Do you perceive that those sessions have been a
 18 benefit to your daughter?
 19 A. Yes, they have been.
 20 Q. How so?
 21 A. It has helped her learn how to verbalize her
 22 feelings and what has been going on in her life, and she has
 23 learned how to talk about what is troubling her and why she
 24 can't sleep at night, the things that keep her awake and give
 25 her a tummy ache. She has learned to verbalize that.

1 Q. And has Mary Macki given you some pointers in
 2 regards on how to deal with Grace and her situation?
 3 A. She has.
 4 Q. All right.
 5 A. Organizational skills and stuff like that that
 6 helps Grace better understand where she is at.
 7 Q. Did you advise Mr. Clayton of the fact that you
 8 were going to go to Mary Macki with your daughter?
 9 A. I did after about the fifth or sixth visits.
 10 Q. Okay. What was his reaction to that?
 11 A. He thought it was hypocritical of me to seek
 12 counseling for her since he thought I was against it.
 13 Q. Has he taken part in any counseling with your
 14 daughter and Mary Macki?
 15 A. Dr. Macki did request that he meet these last two
 16 sessions so that she could get a chance to see him interact
 17 with Grace.
 18 Q. Okay. Have you noticed any behavioral problems
 19 that exist in regard to your daughter since the time of the
 20 separation and institution of the parenting plan in this
 21 case?
 22 A. She's very angry and aggressive as far as her
 23 play routines. Usually the day or two after she has gone
 24 back and forth between households. And we have tried hard
 25 to minimize the conflict and the stress when she does come

1 home. But she does have a lot of anger towards me and
2 towards my family.
3 Q. Okay. I'd like to ask you some questions now in
4 regard to the child support in this case. Judge Barz entered
5 an order of child support of \$115 a month back in late '92.
6 Mr. Clayton is current with his child support payments, is he
7 not?

8 A. Yes.

9 Q. Okay. Where are you presently employed?

10 A. Allen's Tool Repair.

11 Q. And how much do you earn there?

12 A. \$23,192 a year.

13 Q. Okay. Does that break down to an hourly base?

14 A. Yes, it is \$11.15 an hour.

15 Q. And you work a full 40-hour week?

16 A. I do.

17 Q. Okay. Do you anticipate any dramatic changes in
18 your income in the near future?

19 A. I don't.

20 Q. Okay. Is your income affected by anything like
21 profit sharing or performance bonuses, anything like that?

22 A. No. I do get a bonus at Christmastime, usually
23 about \$100.

24 Q. Okay. Your daughter is presently enrolled in
25 daycare; isn't that right?

1 A. Yes.

2 Q. Okay. And where does she go to daycare?

3 A. Alice Mills' house. It's a private residence.

4 Q. And who is Alice Mills?

5 A. She is a friend of mine that I met through friends
6 and through church and --

7 Q. Okay. How long has your daughter been going to
8 Alice Mills for daycare?

9 A. A little over three and a half years, since she was
10 six months old.

11 Q. All right. Is she acclimated in that daycare
12 setting?

13 A. Yes.

14 Q. Does she seem to be happy there?

15 A. Yes.

16 Q. Are there other children that are -- that go to
17 daycare there as well?

18 A. Yes.

19 Q. Do you know how many?

20 A. About four.

21 Q. And has she made friends with those children?

22 A. Yes.

23 Q. How much does your daycare cost you?

24 A. \$50 a week.

25 Q. It strikes me that that is a very reasonable amount

1 of cost for daycare?

2 A. It is.

3 Q. The Court and probably the rest of my divorce
4 clients would like to know how you get that. Could you
5 explain to the Court why it is that it is such a reasonable
6 amount?

7 A. Because Alice is a friend of mine and she's doing
8 this to help me.

9 Q. Okay.

10 A. And we help each other out, back and forth.

11 Q. Is she doing it because of her affection for Grace
12 as well?

13 A. Yes.

14 Q. All right. Do you currently have your daughter
15 enrolled in a health insurance plan?

16 A. Yes.

17 Q. And what health insurance plan is that?

18 A. She is with Blue Chip through the State of Montana.

19 Q. And is there any cost to you for that health
20 insurance?

21 A. Not other than co-pays.

22 Q. All right. Are there any significant co-pays that
23 you have had to pay for treatment for your daughter?

24 A. No.

25 Q. You're aware, are you not, that there may come a

1 time that the Chips program might not exist, or also that you
2 might not no longer qualify for it; is that right?

3 A. Yes.

4 Q. You are aware, are you not, that in the petition
5 for dissolution we have asked the Court to enter a medical
6 support order whereby you and Mr. Clayton will be responsible
7 for medical care for your daughter?

8 A. Yes.

9 Q. And are you in agreement with that?

10 A. Yes.

11 Q. And would you like the Court to implement the plan
12 that is suggested in the petition?

13 A. Yes.

14 Q. Okay. You're aware, are you not, that I prepared
15 child support calculations that I filed with the Court in
16 this matter?

17 A. Yes.

18 Q. And you have reviewed those calculations?

19 A. Mm-hmm, yes.

20 Q. And the matters that are in those calculations as
21 to your income and appropriate expenses are accurate and
22 correct?

23 A. Yes.

24 Q. All right. Before I get into the matters of
25 property, I would like to just ask you a couple more

1 questions about the parenting plan this year.

2 In regard to the parenting plan, you're aware that
3 Mr. Clayton has filed a parenting plan request that
4 essentially your daughter be -- her time be divided equally
5 one week with you, followed by one week with Mr. Clayton, and
6 vice-versa, back and forth.

7 Do you believe that that type of an arrangement is
8 in your daughter's best interest?

9 A. No, I don't.

10 Q. Why not?

11 A. It provides too much of an unstable environment.
12 She would have two homes, but not actually have a home.

13 Q. Okay. Have you discussed the issues of the
14 parenting plan with Mrs. Macki?

15 A. I have.

16 Q. Okay. And has she offered opinion to you as to
17 the current arrangement as to whether it is appropriate or
18 not?

19 A. She feels it's appropriate, from what she has told
20 me.

21 Q. Now, from your earlier testimony, I gather, that
22 your daughter is well adjusted to her environment at daycare.

23 Can you tell the Court briefly about your home situation?

24 Does Grace have her own bedroom?

25 A. Yes.

1 Q. And in that bedroom does she have her own bed?

2 A. Yes.

3 Q. Okay. Do you have her toys and things at your
4 location?

5 A. Yes.

6 Q. And does she seem to be well adjusted to that
7 environment?

8 A. Yes.

9 Q. Okay. Are there any physical issues or mental
10 issues that Grace has that are of concern to you in regard to
11 the parenting plan?

12 A. She does have severe eczema, as well as possibly
13 ADD or ADHD. We're not sure on that yet, but we are keeping
14 an eye on that. And with the eczema she takes antihistamines
15 regularly, as well as a special cream to control her
16 outbreaks and help her sleep through the night, otherwise she
17 has nightmares all night.

18 Q. Is it important that she have a set routine in
19 regard to the eczema in order to minimize the effect of it?

20 A. Yes.

21 Q. And do you keep her on that routine, as best you
22 can?

23 A. I do.

24 Q. In regard to the ADD that you mentioned, you say
25 that she may have those issues. How has it come to your

1 attention that she might have those issues?

2 A. Her baby-sitter, Alice mentioned it to me, and a
3 couple of other friends who have watched her, have mentioned
4 that she tends to exhibit some of the symptoms of ADD. It is
5 hard to know for sure because she is not in school.

6 Q. Have you discussed those issues with Dr. Macki?

7 A. I have. And she thinks that Grace quite possibly
8 is --

9 Q. Okay.

10 A. -- ADD.

11 Q. Has she given you any guidance in regard to things
12 that you can do to minimize the impact of that potential
13 problem?

14 A. She has.

15 Q. And what are those?

16 A. Dietary issues, as well as environmental issues,
17 keeping her routine as set as possible and minimizing the
18 stress and back and forth in her life.

19 Q. And do you believe that the current parenting plan
20 arrangement minimizes the stress in her life as much as it
21 could be minimized in the midst of a divorce?

22 A. Yes.

23 Q. If the parenting plan was to be amended so that
24 Grace spent more time with Mr. Clayton, do you believe that
25 the results would be more or less stress to your daughter?

1 A. I think it would be more stress.

2 Q. And why is that?

3 A. Because she would be going back and forth even more
4 than she is now, and she would have one more situation she
5 has to adjust to.

6 Q. Okay. All right. Does your daughter seem to be
7 well adjusted to the current parenting plan arrangement?

8 A. Yeah.

9 Q. Okay. All right. I'd like to speak to you a
10 little bit about property now. You have heard me represent
11 to the Court that the personal property issues have been
12 resolved. And you are in agreement with that; is that right?

13 A. Yes.

14 Q. Okay. There is also a marital home that you own
15 with Mr. Clayton; is that correct?

16 A. Yes.

17 Q. And it was purchased during the course of the
18 marriage in roughly May of 1998?

19 A. Yes.

20 Q. Okay. And your in agreement, are you not, that the
21 best thing to happen is for that house to be sold and that
22 the proceeds remaining, after the debt obligation is paid
23 and costs of sale, etcetera, be divided between you and
24 Mr. Clayton; is that right?

25 A. Yes.

1 Q. Okay. You are also aware, are you not, that
 2 Mr. Clayton contends that the two of you are jointly
 3 responsible for an obligation of \$20,000 to his parents, or
 4 to his father at least, are you aware of that?
 5 A. Yes.
 6 Q. Okay. Mr. Clayton, as I understand it, will
 7 testify that that was a loan that was given to you folks to
 8 get that house. I'd like for you to tell the Court what you
 9 know about that matter in terms of the \$20,000 that was used
 10 to purchase the house?
 11 A. I was told that his father was giving us \$20,000
 12 for a down --
 13 Q. Who -- I'm sorry.
 14 A. Steve told me that his father was giving us a
 15 \$20,000 down payment so we could buy a house that was at
 16 least \$100,000.
 17 Q. Okay. When did he tell you that?
 18 A. Shortly before we started looking for a house,
 19 probably in March of '98.
 20 Q. Did he ever -- did you ever have any conversations
 21 with his father about that?
 22 A. I didn't, no.
 23 Q. Did anyone ever tell you that that arrangement was
 24 a loan?
 25 A. No.

1 Q. Did anyone ever ask you to execute a promissory
 2 note?
 3 A. No.
 4 Q. Did anyone ever present you with a repayment
 5 schedule in regard to the \$20,000?
 6 A. No.
 7 Q. To your knowledge, has any -- have any payments
 8 ever been made on that obligation by anybody?
 9 A. No.
 10 Q. Have you ever made any?
 11 A. No.
 12 Q. When did you first learn that there was an
 13 allegation that you owed his father a portion of \$20,000?
 14 A. A few months ago when I got a brief, or whatever --
 15 the paperwork from you.
 16 Q. Okay. I'll ask you straight out, what is your --
 17 what is your position in regard to the 20,000? Do you think
 18 you should pay it?
 19 A. No.
 20 Q. Or a portion of it?
 21 A. No.
 22 Q. Why not?
 23 A. Because it was given as a gift, and I didn't have a
 24 say in the matter anyway.
 25 Q. Okay. In regard to the home loan, the house was

1 purchased in May of 1998. And at the time that it was
 2 purchased, both you and Mr. Clayton were employed; is that
 3 right?
 4 A. Yes.
 5 Q. Shortly after Mr. Clayton lost his job; isn't that
 6 right?
 7 A. Yes.
 8 Q. How soon after?
 9 A. About three months after.
 10 Q. And where was he working at that time?
 11 A. Express Trailer Sales.
 12 Q. And do you know what he was -- what his job was?
 13 A. He was a salesman.
 14 Q. Okay. Did he replace that job right away?
 15 A. No.
 16 Q. Do you know what his income was at that job that he
 17 lost?
 18 MR. RINDAL: Objection, Your Honor. I'm not sure
 19 about the relevance, about what they made four, five, six
 20 years ago.
 21 THE COURT: It's very relevant. Objection
 22 overruled.
 23 BY MR. ALBACK:
 24 Q. Do you know how much he was making?
 25 A. He was on salary at \$22,000 a year plus commission.

1 Q. Okay. Since the time that -- the house was
 2 purchased in 1998, up until the taxes -- I'm sorry, up until
 3 the time that you folks separated in 2002, how much did you
 4 average in income per year for '98, '99, 2000, 2001?
 5 A. From about 18,000 a year to about \$22,000 a year.
 6 Q. Okay. All right. And during that same period of
 7 time, how much money did Mr. Clayton earn on average?
 8 A. A couple thousand --
 9 Q. Okay.
 10 A. -- for the year -- or for those three years.
 11 Q. Were there any times during that period of time
 12 that Mr. Clayton didn't work at all?
 13 A. Most of that period of time he was unemployed. I
 14 think he worked a total of maybe seven months.
 15 Q. Okay.
 16 A. In that three-year period of time.
 17 Q. What did he do to occupy his time?
 18 A. He went to school.
 19 Q. And where did he go to school?
 20 A. MSU-B.
 21 Q. And are you aware of what resulted from those
 22 academic pursuits?
 23 A. He earned a history degree.
 24 Q. Okay. And do you know when that was obtained?
 25 A. In May of 2002.

1 Q. Okay. There is also a contention that you and
2 Mr. Clayton are obligated to Mr. Clayton's father for a
3 loan apparently for a pickup truck or -- and I believe the
4 allegation is that it is roughly \$17,600. Tell the Court
5 what you know about that transaction?

6 A. Steve put in an order for a full size pickup truck,
7 and we started saving money for it and had about four or
8 \$5,000 in savings when the truck finally made it on the lot.
9 And he went down to get financing for the other portion of
10 it, and GMAC would only give him 21.9 percent.

11 So he called his dad and his dad overnighted the
12 cashier's check to him for the price of the truck.

13 Q. First of all, you said that we saved money, four or
14 \$5,000, who saved that money?

15 A. It was primarily taken from one of Steve's
16 paychecks a month.

17 Q. Okay. In regard to the money that he got from
18 his dad, did you have anything to do with that?

19 A. No.

20 Q. Did you have anything to do with negotiating the
21 purchase of the vehicle?

22 A. No.

23 Q. Did you have anything to do with trying to get a
24 loan with GMAC?

25 A. No.

1 Q. How did you come to know that this transaction was
2 taking place?

3 A. He called me and told me.

4 Q. Okay. At that time did you say, we're going to
5 borrow \$21,000 from dad?

6 A. Yeah.

7 Q. He did? And what did you say?

8 A. Okay, really?

9 Q. All right. Was it -- were you ever given a note
10 from his father in regard to that obligation?

11 A. No.

12 Q. Were you ever on the title to that truck?

13 A. No.

14 Q. At any point in time?

15 A. (Shook head negatively.)

16 Q. Is the pickup still owned by you folks?

17 A. No.

18 Q. Or by Mr. Clayton?

19 A. No.

20 Q. What happened to it?

21 A. It was sold about a year after purchase, and we
22 traded it for a '97 Achieva and some cash.

23 Q. All right. And at that point in time was
24 Mr. Clayton repaid for the loan that he had apparently made?

25 A. No.

1 Q. Who made that decision?

2 A. Steve did.

3 Q. Okay. You said that the pickup was sold,
4 Mr. Clayton obtained an Achieva automobile. That is the
5 Achieva automobile that is awarded to him by the stipulation
6 that you folks have entered into and that we represented to
7 the Court?

8 A. Yes.

9 Q. And so, in fact, the fruits of that loan are still
10 in Mr. Clayton's possession?

11 A. Yes.

12 Q. Are there other personal items that are on that
13 property distribution that Mr. Clayton purchased after the
14 sale of the pickup?

15 A. I believe there is a computer on there and a few
16 firearms, yes.

17 Q. Okay. And when was the pickup sold?

18 A. August of '99.

19 Q. Okay.

20 A. No, August of '98, excuse me.

21 Q. All right. And by that time Mr. Clayton had lost
22 his job; isn't that right?

23 A. Yes.

24 Q. And so by your testimony he was averaging an annual
25 income of roughly \$2,000 by that point in time?

1 A. Yes.

2 Q. And you were averaging between eighteen and 22,000?

3 A. Yes.

4 Q. Who was paying the bills?

5 A. I was.

6 Q. What do you have for a vehicle?

7 A. My personal vehicle is a '90 Dodge Ram.

8 Q. And that '90 Dodge Ram is a vehicle that you had
9 prior to the marriage to Mr. Clayton; isn't that right?

10 A. Yes.

11 Q. And so, as a matter of fact, you have not ended up
12 with a vehicle out of this at all?

13 A. No.

14 Q. Out of the marriage?

15 A. No.

16 Q. Isn't it also true that in regard to the
17 distribution of assets that we have agreed to with the
18 Court, that the values to those assets are values that were
19 apportioned by Mr. Clayton in his discovery -- or I'm sorry,
20 in his disclosure documents?

21 A. Yes.

22 Q. And isn't it true that those assets that he
23 allocated to you and that he -- are worth roughly \$2200 and
24 those that he allocated to himself are worth roughly \$10,600?

25 A. Yes.

1 Q. All right. I would now just like to talk to you
2 briefly about the obligations of the marriage. Okay? You
3 agree that there is a home mortgage?

4 A. Yes.

5 Q. And you agree that the house should be sold and
6 that mortgage paid for out of the sale?

7 A. Yes.

8 Q. Okay. At the time that you and Mr. Clayton
9 separated in June of 2002, what other debt did he have?

10 A. Three credit cards.

11 Q. And --

12 A. And personal student loans.

13 Q. All right. And the student loans -- pardon me, you
14 had a student loan, right?

15 A. I have three.

16 Q. Okay. And is it your position that you should end
17 up with those student loans?

18 A. Yes.

19 Q. And through discovery we learned that Mr. Clayton
20 has some student loans as well. Is it your request that he
21 be allocated with that obligation?

22 A. Yes.

23 Q. Okay. So apart from those and apart from the home
24 mortgage, the only other debt was three credit cards, right?

25 A. Yes.

1 Q. Okay. Those three credit cards were what at the
2 time you got the -- or separated, I'm sorry?

3 A. About three or 4,000 on one of them, 2,000 on one,
4 and a thousand on the other.

5 Q. Okay. And initially when you folks separated, was
6 an agreement reached as to who would take -- be responsible
7 for those debts?

8 A. Steve said he'd pay for them.

9 Q. Okay. In fact, Steve presented you with a document
10 that said that he would pay for them, did he not?

11 A. Yes.

12 Q. Okay. In his document he makes reference to the
13 Genus bill. Can you, just for clarification, tell us what
14 that is?

15 A. Genus was a debt consolidation program that I had
16 enrolled us in before we bought our house, or about the time
17 we bought the house.

18 Q. Okay.

19 A. So that we could consolidate all the credit cards
20 into one low monthly payment.

21 Q. Okay. Did you, subsequent to the time of your
22 separation -- first of all, who were the credit cards --
23 whose name were the credit cards in?

24 A. Mine.

25 Q. Not Mr. Clayton's at all?

1 A. No.

2 Q. Did there come a time that you learned that the
3 credit card payments weren't being made?

4 A. Yes.

5 Q. And when did that occur?

6 A. Shortly after Christmas when I started receiving
7 late notices in the mail.

8 Q. What did you do at that time?

9 A. I confronted him with it and he said he was
10 handling it. And two weeks later I got more late notices and
11 a phone call, so I started making payments on the credit
12 cards.

13 Q. Okay. Let's talk about the specific credit cards.
14 The first one is a Wal-Mart Mastercard; is that right?

15 A. Yes.

16 Q. And you have paid that one off entirely; is that
17 right?

18 A. Yes.

19 Q. How much did it take to pay that off?

20 A. It was about \$450.

21 Q. Okay. Then there is another Mastercard, which is a
22 Chase Mastercard; is that right?

23 A. A Chase Visa.

24 Q. Chase Visa, okay. And what is the current balance
25 on that one?

1 A. That one is about \$890.

2 Q. And how much have you paid to bring it down to that
3 balance?

4 A. About 300.

5 Q. Okay. And then the last one, you tell me because
6 I'll mess it up.

7 A. Is a Bank One Mastercard, it used to be a First
8 Card Mastercard.

9 Q. All right. And what is the balance of that?

10 A. It is at \$2,491.

11 Q. Okay. How much have you paid towards that
12 obligation?

13 A. About \$250.

14 Q. Okay. And that was after you became aware that the
15 payments weren't being made; is that right?

16 A. Yes.

17 Q. Okay. Is it your position -- what is your position
18 in regard to those credit cards? Who do you think should be
19 responsible for them?

20 A. I think he should be responsible for the balance on
21 them.

22 Q. Why?

23 A. Because he's -- he's keeping most of the property
24 that was bought with the credit cards.

25 Q. And what property by and large was purchased with

1 those credit cards?
 2 A. Firearms, computer games, DVDs, electronic
 3 equipment, computers.
 4 Q. Any furniture?
 5 A. A couch, a computer desk that I think he broke
 6 after I moved out.

7 Q. All right.
 8 MR. ALBACK: I have nothing further of this
 9 witness, Your Honor.

CROSS-EXAMINATION

10 BY MR. RINDAL:
 11 Q. Ms. Clayton, I just want to touch on just a few
 12 points that you made. Since it's immediately in my mind,
 13 let's talk about the credit cards. You talked about an
 14 agreement that you and Steve had when you were first breaking
 15 up. Did you and Steve sign some document?
 16 A. No, sir. It was a document that he printed up and
 17 gave to me.
 18 Q. Did you agree to it?
 19 A. No.
 20 Q. Okay. But in that document -- you're testifying
 21 now that he said he would pay them, and you testified to the
 22 Court that you wished that he would pay them, apparently
 23 because he was -- agreed to it?
 24 A. He volunteered to do it.
 25

1 Q. Sure. But you didn't agree -- you just testified
 2 you didn't agree to that?
 3 A. Not to the whole thing entirely.
 4 Q. Okay. So the agreement was off, right?
 5 A. Basically.
 6 Q. Okay. Now, wasn't it in fact that those credit
 7 cards were also used to buy food when you were married to
 8 him?
 9 A. Yes.
 10 Q. Okay. And would you say you'd testify about 50
 11 percent of the purchases were actually food for the family?
 12 A. No.
 13 Q. Okay. Do you have a percentage in mind?
 14 A. I don't. But I'd say probably closer to 20
 15 percent.
 16 Q. Okay. And those credit cards were in just your
 17 name?
 18 A. Yes.
 19 Q. And who used the credit cards?
 20 A. Both of us.
 21 Q. Okay. Going backwards, then, from your testimony,
 22 you both -- you agreed that Steve should take his student
 23 loan and you should take your student loan, correct?
 24 A. Yes.
 25 Q. And you testified that the home mortgage should be

1 paid off on the sale of the house?
 2 A. Yes.
 3 Q. Or refinanced?
 4 A. Yes.
 5 Q. Okay. I want to talk for a little bit about the
 6 pickup. I believe you testified, and I don't have the exact
 7 words in front of me, but that you had nothing to do with the
 8 pickup?
 9 A. Not from the financial end of it.
 10 Q. Okay. Did you oppose Steve and you getting the new
 11 pickup, buying the pickup?
 12 A. No.
 13 Q. Okay.
 14 A. He was employed at the time.
 15 Q. And did you in fact go down to the dealership and
 16 help him pick it out, pick all the options?
 17 A. A few of them.
 18 Q. Okay. And did you -- did you use the pickup while
 19 you were married to him?
 20 A. I think I got to drive it three times.
 21 Q. Okay. Do you know why your name wasn't put on
 22 the -- on the title?
 23 A. No.
 24 Q. Okay. It wasn't because you and Steve discussed
 25 your driving record and you were concerned with having the

1 insurance go up?
 2 A. No.
 3 Q. Did you and Steve sell that pickup?
 4 A. Yes.
 5 Q. Okay. And I believe you testified that you got
 6 cash for it and then you received some Achieva that is valued
 7 at \$1500. What did you do with the cash?
 8 A. I think he put it in his bank account.
 9 Q. And do you know what -- was it a separate bank
 10 account or was it a joint bank account?
 11 A. I don't recall, to be honest.
 12 Q. Okay. Is it possible that that went into a joint
 13 bank account to pay family bills?
 14 A. It's possible.
 15 Q. Okay. And do you recall when the sale of the
 16 pickup was?
 17 A. About August.
 18 Q. Of?
 19 A. Of '98.
 20 Q. Okay. And you guys continued to be married and not
 21 separated until four years later?
 22 A. Yes.
 23 Q. Okay. And is that -- all that cash that you got
 24 from the pickup, is that gone?
 25 A. It was gone before February of '99.

1 Q. Okay. So within six months, at least?

2 A. Yes.

3 Q. Okay. I want to talk a few moments about the

4 parenting plan. You're aware that Mr. Clayton has requested

5 additional time with his daughter; is that correct?

6 A. Yes.

7 Q. Has Mr. Clayton asked you to have his daughter on

8 his days off during the week?

9 A. About a year ago he did.

10 Q. Okay. And are you letting him have Grace on his

11 days off from work?

12 A. No.

13 Q. Okay. Why?

14 A. Because it's an unpredictable day, and when I have

15 to pay a baby-sitter a set rate a week, I can't take her

16 living away from her.

17 Q. So you -- is it your belief that it is better to

18 keep Grace in daycare than allow her father to have her on

19 his days off?

20 A. Yes.

21 Q. Okay. And one of those reasons is to insure the

22 financial stability of your daycare provider?

23 A. One of the reasons.

24 Q. Okay. Do you have other reasons?

25 A. Well, because she went to that daycare provider for

1 three years while he sat at home unemployed.

2 Q. Okay. Well, I'm not sure how the unemployed has

3 relevance. But regarding the daycare, she goes what days?

4 A. Monday through Friday, 8:30 to 5:00.

5 Q. And I believe you said that her name, Alice Mills,

6 she watches four other kids?

7 A. Let me count.

8 Q. Okay.

9 A. (Pause.) Yes.

10 Q. Okay.

11 A. Sometimes a fifth, but very rarely.

12 Q. Okay. So Grace and then four other kids that

13 you're aware of?

14 A. Yes.

15 Q. Are two of those kids your domestic partner's

16 children?

17 A. They are my boyfriend's children.

18 Q. Okay. Do you live with your boyfriend?

19 A. His children live with me.

20 MR. ALBACK: Objection as to relevance, Your Honor.

21 MR. RINDAL: I'm just -- it's a choice of terms,

22 Your Honor. I wasn't trying to say -- I said domestic

23 partner, boyfriend, they live together.

24 THE WITNESS: His children live with me, he has his

25 own residence.

1 MR. ALBACK: Your Honor, if I may. I'm going to

2 instruct my client not to answer. Whether they are two

3 people from Mars, it makes no difference, unless -- the

4 relevance of the fact that these children may be children of

5 someone that my client may have a relationship with is

6 improper.

7 MR. RINDAL: If I may --

8 THE COURT: The objection is overruled since it has

9 already been mentioned, but I agree with you on overall

10 relevance as far as this matter is concerned.

11 MR. RINDAL: And I apologize, Your Honor, I'm not

12 going into her relationship with her boyfriend. I'm talking

13 about the necessity of keeping Grace in the daycare.

14 BY MR. RINDAL:

15 Q. Right now I believe that you allow Mr. Clayton to

16 have Grace on every other weekend; is that correct?

17 A. Yes.

18 Q. And from what time does -- that Mr. Clayton picks

19 Grace up until when does he return her?

20 A. Usually about four o'clock on Friday and he picks

21 her up and he brings her home, or I pick her up at six

22 o'clock on Sunday.

23 Q. So approximately two full days?

24 A. Mm-hmm.

25 Q. And that's -- are you aware that he had to switch

1 his schedule around so he could have those weekends off with

2 her?

3 A. No.

4 Q. Okay. I would offer to you that testimony he will

5 testify that that is -- that is correct.

6 On the days that he has -- doesn't have the weekend

7 off, he gets days off during the week, Monday through Friday,

8 are you aware of that?

9 A. No.

10 Q. Okay. He'll provide testimony to that. Well, I'm

11 confused then, because you said you are not aware that he

12 gets days off during the week?

13 A. I don't know when his days off are because he

14 doesn't converse with me.

15 Q. Okay. If he converses with you and sends e-mails

16 his days off, say a week or two in advance, because he works

17 in a place that has different days off, then if you know in

18 advance, are you willing to have Grace during his days off?

19 A. No, because I'd have to find a different

20 baby-sitter. I can't ask my baby-sitter to hold open a

21 spot for a child who is only there half a week.

22 Q. What -- you say -- I believe you testified you pay

23 \$50 a week?

24 A. Yes.

25 Q. Is that like -- I'm terrible at math, but is it

- 1 like \$12.50?
- 2 A. \$10 a day.
- 3 Q. Excuse me, \$10 a day. So is it a daily rate or
- 4 weekly rate?
- 5 A. It is a weekly rate.
- 6 Q. So you pay whether she goes or not, correct?
- 7 A. Pretty much.
- 8 Q. Okay. Well, then, if Ms. Mills is getting paid
- 9 whether she is there or not, I don't understand why
- 10 Mr. Clayton can't have Grace on his days off?
- 11 A. Because financially it is not viable for me to be
- 12 paying a baby-sitter when she is not watching my child.
- 13 Q. Would it matter to you then -- I'm trying to get
- 14 this understanding, does it matter to you whether Alice
- 15 Mills, who is just the baby-sitter, watch Grace during those
- 16 hours, or Mr. Clayton, the father of Grace gets to watch
- 17 Grace during those hours? Does it matter to you?
- 18 A. Yes.
- 19 Q. Why?
- 20 A. Because when Grace is with Alice she gets to see
- 21 people, she goes places, she has fun. When she is with her
- 22 dad she tells me she watches TV, maybe plays in the yard or
- 23 goes to Wal-Mart.
- 24 Q. Okay. How old is your daughter?
- 25 A. Four.

- 1 Q. Okay. Is she very expressive? Does she tell you
- 2 everyday everything she does?
- 3 A. Yes.
- 4 Q. So she told about the park, recently going to the
- 5 park and playing?
- 6 A. She told me they went for a walk.
- 7 Q. Do you remember what day it was?
- 8 A. Just sometime this last week.
- 9 Q. What about on the 17th?
- 10 A. That was yesterday.
- 11 Q. Right. Did she tell you that?
- 12 A. Yeah.
- 13 Q. Okay. What did she do?
- 14 A. She eight pizza at daddy Steven's house with papa
- 15 and grandma, and grandma had a fever.
- 16 Q. Okay. Now, just yesterday, is it my understanding
- 17 that Steve's parents -- or the father came up, and he got to
- 18 see his granddaughter, which he is in California, correct?
- 19 A. Mm-hmm.
- 20 Q. So he doesn't see his granddaughter very often?
- 21 A. Yes.
- 22 Q. How many hours did you allow Steve to have Grace
- 23 yesterday?
- 24 A. I don't know. Steve picked Grace up at 8:30 at my
- 25 work, and I'm not sure what time he dropped her off at the

- 1 baby-sitter.
- 2 Q. You didn't give him instructions?
- 3 A. I didn't given him any instructions. He never
- 4 asked for any extra time.
- 5 Q. Okay. So then would it matter to you if he picked
- 6 up Grace every day at your work at 8:30 on his days off and
- 7 dropped her back off when you'd get off work?
- 8 A. Yes, because I don't know what days that would be.
- 9 And when she makes plans with Alice to go places, and she
- 10 doesn't know that her dad is going to pick her up, it makes
- 11 her very upset.
- 12 Q. Does Alice transport the children?
- 13 A. No, I do.
- 14 Q. Well, I'm confused then. You just --
- 15 A. Alice -- Alice plans things to do with the kids so
- 16 that they have a fun day. If she tells them, hey, we're
- 17 going to go to Rose Park tomorrow, and then Steve shows up to
- 18 pick her up instead, she is gypped out of going to Rose Park
- 19 and she gets upset because she is not expecting to see her
- 20 dad there and it messes up her routine.
- 21 Q. Is it your position then that it is more important
- 22 that she gets to do the little -- the little things with
- 23 Alice Mills than she spends additional time with her father?
- 24 A. I think it is important that she maintains a
- 25 schedule so she knows what to expect.

- 1 Q. So is that a yes, I didn't quite understand?
- 2 THE COURT: I think you are being argumentative on
- 3 this issue. I'm the one that is going to ultimately decide
- 4 the parenting plan
- 5 MR. RINDAL: I understand, Your Honor.
- 6 BY MR. RINDAL:
- 7 Q. Since the last meeting, I believe it was
- 8 October -- early October of 2002, did we -- did we discuss --
- 9 allowing Steve to have the right of first refusal when you
- 10 are not able to take care of your daughter?
- 11 A. Yes, and I signed paperwork saying that when
- 12 daycare is closed and I have to work, Steve has the right of
- 13 first refusal.
- 14 Q. But no other time?
- 15 A. That was all he asked for. That was the paperwork
- 16 you sent over and I signed.
- 17 Q. Have you been refusing to allow Steve to have -- to
- 18 spend time with his daughter other than the exact letter of
- 19 the T that Judge Barz said, every other weekend?
- 20 A. He has never asked for more.
- 21 Q. And Grace has never asked you to spend more time
- 22 with him?
- 23 A. No.
- 24 Q. Okay.
- 25 A. In fact, when she asks if she can call her dad, I

- 1 give her the phone and she punches the button and she calls
2 her dad.
- 3 Q. I believe you said that it is important for Grace
4 to have her own space, her own bedroom and own bed, she has
5 that at your place?
- 6 A. She does.
- 7 Q. How big is the house?
- 8 A. It is a small two bedroom. I'm not intending to
9 stay there forever.
- 10 Q. Okay. How many people live in that house? How
11 many children? I don't need names.
- 12 A. Grace and I live there consistently, I have two
13 other children that stay there occasionally.
- 14 Q. Okay. And how old are those children?
- 15 A. Three and five.
- 16 Q. Do those children stay with Grace in her bedroom
17 then?
- 18 A. Yes, in their own beds.
- 19 Q. You have three beds in there?
- 20 A. I do. I built them bunk beds.
- 21 Q. Okay. So if -- do you believe that if Steve would
22 help you with that \$10 a day, it would -- do you believe that
23 that \$10 a day payment from Mr. Clayton to Alice Mills would
24 relieve that problem and having -- losing that slot?
- 25 A. No, because it still affects her routine.

- 1 Q. Okay. I want to talk for just a few moments about
2 that loan from Steve's father of 19,000 and some change. I
3 believe you said that you had nothing to do with that?
- 4 A. Which, are you talking about the truck or the --
- 5 Q. Yes, the pickup truck which was \$19,000 and some
6 specific change.
- 7 A. I didn't have a say in the decision making of it.
8 He called his father and asked for money.
- 9 Q. Okay. Did you -- but I believe you testified that
10 you also enjoyed the benefit of that pickup?
- 11 A. Yeah.
- 12 Q. And then when you guys sold it a year later, or
13 whatever it was, that you used that money to help living
14 expenses?
- 15 A. Yes.
- 16 Q. And so do you believe that that debt exists or does
17 not exist?
- 18 A. I don't believe it exists for me. I mean --
- 19 Q. Well, I want to clarify that then. What do you
20 mean that it doesn't exist for you?
- 21 A. It was money that Steve borrowed from his dad.
- 22 Q. Okay. And it went to benefit you also?
- 23 A. For a short period of time, yes.
- 24 Q. For how long?
- 25 THE COURT: Have you heard of the Statute of

- 1 Frauds, Mr. Rindal? There is nothing in writing showing
2 there is any obligation whatsoever. That might give you a
3 clue how that is going to turn out.
- 4 BY MR. RINDAL:
- 5 Q. Ms. Clayton, have you ever paid -- made payments to
6 Mr. Clayton for that loan?
- 7 A. I have.
- 8 Q. Why?
- 9 A. Because Steve's dad was so generous giving us money
10 every time he lost his job, that when he said pay me \$300 a
11 month and that is fine. I sent him \$300 a month as long as I
12 could afford to pull it out of our finances.
- 13 Q. But that -- so you admit that there was a loan and
14 you made payments?
- 15 A. I did.
- 16 Q. Okay.
- 17 A. I made payments.
- 18 Q. On that loan. Thank you.
- 19 I don't recall if you answered this question, I'll
20 say it and if you have already said it, I apologize. When
21 you separated with Steve, you had three credit cards or four
22 credit cards?
- 23 A. Three.
- 24 Q. Okay. And you and Steve made payments on those?
- 25 A. Steve made payments until about Christmas.

- 1 Q. Okay.
- 2 A. When he quit making payments.
- 3 Q. And then you started making payments on those?
- 4 A. I started because he quit making payments. I was
5 getting the late notices.
- 6 Q. Was there other family obligations, other family
7 debts that Steve continued to pay that you didn't pay?
- 8 A. He was paying on the house payment, as far as I
9 know.
- 10 Q. Okay. How much was that house payment?
- 11 A. When I left it was \$685.31.
- 12 Q. So round it to, say, 685, would be fair?
- 13 A. (Nodded head.)
- 14 Q. Okay. And Steve made -- has been making those
15 payments as far as you know?
- 16 A. As far as I know.
- 17 Q. How much have you been paying each month on those
18 credit cards?
- 19 A. Whatever the minimum balance is and whatever else I
20 can scrape out of my account. Usually around hundred bucks a
21 card.
- 22 Q. Okay. And there was three cards you said?
- 23 A. Yes.
- 24 Q. So that is about \$300 a month?
- 25 A. Yes.

1 Q. Do you think that's fair that you are paying the
2 credit cards payments and Steve was paying the house
3 mortgage?

4 A. No.

5 Q. You went at some great length about how much Steve
6 did or did not make in the last five, six years. Are you
7 contending that you are the only bread winner or the main
8 bread winner until you split up?

9 A. Primarily.

10 Q. Okay. And so it was your income only, pretty much,
11 that paid all the bills?

12 A. For the most part, yes.

13 Q. Do you and Steve have gambling problems?

14 A. I don't.

15 Q. Do you think Steve does?

16 A. Not that I'm aware of.

17 Q. Is there any addiction problems, alcohol, drugs,
18 nothing like that?

19 A. No.

20 Q. Okay. Is it -- from your memory, is it your
21 testimony -- or let me ask it a different way. Did
22 Mr. Clayton, Steve's father, also supplement your income for
23 a long time period of time?

24 A. Steve's dad sent anywhere from 750 a month to
25 \$1500 a month for every month that Steve wasn't in -- Steve

1 wasn't working.

2 Q. Okay. Well, you made a big -- like I said, you
3 made a big issue about how much you made compared to he, and
4 that is five, six years ago. How do you think that that's
5 relevant to --

6 THE COURT: I will tell what is relevant and what
7 isn't. You are invading my province.

8 MR. RINDAL: Your Honor, I don't intend to do that.
9 I'm trying to -- she made a point of bringing it out, I was
10 curious --

11 THE COURT: She didn't make a point out of it, you
12 did.

13 MR. RINDAL: Nothing further, Your Honor. Thank
14 you very much.

15 MR. ALBACK: Just a couple of questions, if I may,
16 Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. ALBACK:

19 Q. Mary Beth, Mr. Rindal asked you -- the way he asked
20 you was that you have only allowed Mr. Clayton certain
21 visitation. Isn't it true that what you -- the visitation
22 that he has gotten has been the visitation that was
23 established by this Court after the hearing in September of
24 2002?

25 A. Yes.

1 Q. And isn't it true that you followed that to the
2 letter?

3 A. Yes.

4 Q. And that you have never denied him visitation of
5 that nature at all?

6 A. No.

7 Q. Isn't it also true that at some point in time you
8 allowed Mr. Clayton to take your daughter to an extended trip
9 to visit his parents in California?

10 A. Yes.

11 Q. Did you ever balk at that when it was suggested
12 that he wanted to do that?

13 A. I asked him to wait until after the custody
14 hearing.

15 Q. All right. And she went and you're glad about
16 that; isn't that correct?

17 A. Yes, she enjoyed herself.

18 Q. Okay. He asked you about the concerns you have,
19 I'm sorry, you testified that you had concerns about what
20 happens at Mr. Clayton's home. One of the criteria in regard
21 to the best interests of the children are mental health
22 issues. Does Mr. Clayton have some mental health issues that
23 cause you concern in regard to your daughter?

24 A. He was treated for depression a few years ago, but
25 that was about it.

1 Q. Have you evidence -- do you know, has he -- has he
2 been under medication for depression?

3 A. He was trying Paxil for awhile.

4 Q. All right. Do you have concerns about how his
5 depression exhibited itself in his daily life?

6 A. He keeps pretty much to himself and Grace is a very
7 social person.

8 Q. How about in terms of at his home, what type of
9 activities -- when the two of you were together, what type of
10 things would he do to occupy his time?

11 A. Watch TV and play on the computer.

12 Q. Okay. Mr. Rindal asked you about payments you had
13 made to Mr. Clayton's father in the amount of \$300 each
14 apparently. Those payments that were made to him, what were
15 the circumstances -- I'll ask it another way. I apologize.

16 Who took care of paying the bills, writing the
17 checks to pay the bills when you and Mr. Clayton were
18 together?

19 A. I did.

20 Q. Okay. And so the checks that -- did the two of you
21 pool your money together at that time as well?

22 A. Yes.

23 Q. And so was it your intention that payments that you
24 were making were evidencing your belief that you owed
25 Mr. Clayton personally for that debt?

- 1 A. No, it was just a check to his dad.
 2 Q. Okay. Student loan payments, did they come out of
 3 that check too -- or out of that account too, yours and his?
 4 A. I don't believe he had any at the time, but mine
 5 came out of our joint account.
 6 Q. Okay. All right. And that is an obligation that
 7 you are taking as your sole and separate in this matter,
 8 right?
 9 A. Yes.
 10 Q. One final thing, Mr. Clayton -- or Mr. Rindal asked
 11 you about, do you think it is fair that he made the house
 12 payment and you paid so much towards the credit cards. Who
 13 was living in the house?
 14 A. He was.
 15 Q. All right. And isn't it true that during that
 16 period of time that he was living in the house, at least for
 17 a portion of the time, he had a tenant?
 18 A. Yes.
 19 Q. Who was paying him rent?
 20 A. Supposed to be paying him rent.
 21 Q. Did he ever tell you how much rent he was getting
 22 for that?
 23 A. No.
 24 Q. Did he ever share any rental income from that
 25 property with you?

- 1 A. No.
 2 MR. ALBACK: Nothing further, Judge.
 3 RECROSS-EXAMINATION
 4 BY MR. RINDAL:
 5 Q. Ms. Clayton, you said that he never shared with you
 6 how much he got. Do you recall the October, I think 9th
 7 hearing, when it was on testimony here in front of this judge
 8 that he was making -- or he was getting \$300 a month; do you
 9 recall that?
 10 A. No. We had a hearing in September.
 11 Q. I'm sorry. I could be wrong on the date.
 12 A. And when I asked him personally how much he was
 13 getting for rent, he walked, turned around and walked in and
 14 shut the door.
 15 Q. We had a hearing and he told you then?
 16 A. Not that I am aware of.
 17 Q. It is in the court record, that is what he used to
 18 set the child support. This -- Judge Barz took that into
 19 account and set it on the child support.
 20 A. I don't recall.
 21 Q. Okay. And do you recall then also your income,
 22 Mr. Clayton's income went into this joint account that you
 23 say now, they -- your were commingling your funds, you put
 24 your check in, he put a check in, but you are the one that
 25 did most of the actual check writing?

- 1 A. Yes.
 2 Q. Okay. You said during your marriage when you were
 3 still together with Mr. Clayton that he spent most of his
 4 time watching TV or playing on the computer, correct?
 5 A. Yes.
 6 Q. Wasn't in fact that Mr. Clayton was in college
 7 during that period of time and he was on the computer
 8 working?
 9 A. Some of the time.
 10 Q. Okay. So is it your -- is it your belief now, I
 11 mean apparently it seems like you're saying that when he has
 12 Grace that he doesn't do anything with her?
 13 A. Grace tells me that they go to Wal-Mart and they
 14 play with her dog, and occasionally they will take a walk.
 15 But that is usually the extent of what she has done.
 16 Q. Mm-hmm. Okay. I believe you testified also that
 17 you never restricted any contact with between Mr. Clayton and
 18 his daughter, no extra time; is that correct?
 19 A. As far as what the Court ordered, yes, that's
 20 correct.
 21 Q. No, I believe I asked you specifically if you
 22 ever -- if he ever -- if Mr. Clayton ever asked you to spend
 23 more time with her, and I asked if you ever said no. And I
 24 think you said, I don't refuse; is that correct?
 25 A. I'm trying to figure out what you are asking, but

- 1 just a second.
 2 Q. You testified that you followed the Judge's
 3 parenting plan to an T?
 4 A. Yeah. And when she has been at daycare, she has
 5 been at daycare. When it has been his days, she has been
 6 with him.
 7 Q. And it's still your absolute position that he
 8 shouldn't be allowed to spend any more time, rather that it
 9 is better to keep her in daycare?
 10 A. Yes.
 11 MR. RINDAL: Okay. Nothing further, Your Honor.
 12 MR. ALBACK: I have nothing further, Judge.
 13 THE COURT: You may step down.
 14 MR. ALBACK: The petitioner calls Mary Macki, Your
 15 Honor.
 16 MARY MACKI,
 17 called as a witness, and having been first duly sworn, was
 18 examined and testified as follows:
 19 DIRECT EXAMINATION
 20 BY MR. ALBACK:
 21 Q. Would you state your name, please?
 22 A. Mary Macki.
 23 Q. And where do you reside?
 24 A. In Billings, Montana.
 25 Q. All right. And what do you do for a living?

- 1 A. I'm a licensed clinical professional counselor.
 2 Q. How long have you been such a licensed clinical
 3 professional counselor?
 4 A. For seven years.
 5 Q. All right. What is your educational background?
 6 A. And I have master's in education -- a master's in
 7 counseling, a bachelor's in education, sociology and
 8 psychology.
 9 Q. All right. And in your present employment
 10 situation, what do you do?
 11 A. I work primarily with children, but in it I also do
 12 mediation. I do a lot with parenting plans, custody
 13 investigations, evaluations, supervised visitation, mediation
 14 with divorced couples.
 15 Q. Okay. Have you had experience in that line of
 16 work? Other than your counseling business, do you have a
 17 past history of -- that is appropriate to what you do now?
 18 Court services or anything like that?
 19 A. No, sir.
 20 Q. All right. Okay. Have you testified as an expert
 21 witness in divorce proceedings before?
 22 A. Yes, sir.
 23 Q. Okay. How many times? Ballpark.
 24 A. More than 50, closer to 100 probably.
 25 Q. Okay. And how many families would you estimate you

- 1 have dealt with in your career as a counseling or in these
 2 types of issues?
 3 A. In regards to custody?
 4 Q. In regards to custody matters, yes.
 5 A. Once again, easily 50 to 100.
 6 MR. ALBACK: Your Honor, I'd ask that this client
 7 be accepted by the Court as an expert witness in this matter.
 8 THE COURT: She is designated as an expert witness
 9 by this Court.
 10 MR. ALBACK: Thank you, Your Honor.
 11 BY MR. ALBACK:
 12 Q. You are familiar with the parties to this matter;
 13 isn't that right?
 14 A. Yes, sir.
 15 Q. Okay. You know Mrs. Clayton and Mr. Clayton?
 16 A. Yes.
 17 Q. And their daughter Grace?
 18 A. Yes, I do.
 19 Q. Okay. Could you tell the Court briefly how it is
 20 that you have become involved in this matter?
 21 A. I was contacted by Mary Beth Clayton in regards to
 22 visiting with her daughter Grace. There were concerns about
 23 some anxiety, there is also some -- the fact that she's just
 24 turned four. There is also concerns about -- what I have
 25 seen as concerns, there's boundary issues. There are some

- 1 anxiety issues.
 2 She has some manic complaints as far as tummy
 3 aches, headaches.
 4 Q. All right.
 5 A. Pretty much adjustment issues to the whole
 6 situation at hand.
 7 Q. And in your experience is that somewhat typical in
 8 these types of situations?
 9 A. Yes.
 10 Q. Has it been your experience or your observation
 11 regarding Grace that her symptoms that she is exhibiting are
 12 any worse than the average, or is there anything that really
 13 stands out that causes you great concern?
 14 A. The biggest thing that stands out that causes me
 15 great concern is her boundary issues, is it -- it isn't as
 16 directly related to the divorce so much as it is to learning
 17 appropriate ways for her to identify strangers, not to be so
 18 familiar with people, safety needs in that area.
 19 Q. Okay. All right. And in the course of your
 20 contact with Grace, have those sessions been with Mary Beth
 21 as well?
 22 A. Yes.
 23 Q. Okay. Have you had sessions with Grace and
 24 Mr. Clayton?
 25 A. Yes.

- 1 Q. Okay. How many with Mr. Clayton, do you remember?
 2 A. Two.
 3 Q. All right. Are you aware of the current parenting
 4 arrangement that is in place in this case?
 5 A. Yes, I am, sir.
 6 Q. And you're aware that this was a -- it's every
 7 other weekend *plus two evenings* a week?
 8 A. Yes.
 9 Q. In your profession opinion, do you believe that
 10 that is a proper parenting arrangement for these people and
 11 that little girl in this situation?
 12 A. Yes, sir.
 13 Q. Mr. Clayton has filed documents with the Court
 14 where he has requested that the visitation be amended to be
 15 essentially alternating weeks; that he would have Grace for
 16 one week, then she would be with her mother for the next week
 17 and so on, so forth down the line.
 18 Do you have an opinion as to whether or not that
 19 would be a favorable arrangement?
 20 A. This is the first I had heard about this
 21 suggestion. I will say looking at both of these parents and
 22 watching this child interact, she is very, very much bonded
 23 to both of her parents. She has a very healthy relationship
 24 with both parties. I will say that she -- what I have seen
 25 is she identifies her primary home base, her primary

1 residence as with Mary Beth. But she certainly has the
2 utmost -- you know, a very healthy relationship with her
3 father.

4 Q. Good.

5 A. On a personal level I find, and on a professional
6 level, those children at this early of an age that already
7 begin the alternating weeks, it is fairly disruptive in their
8 life because of trying to establish some type of stability.

9 Q. I take it, then, that it would be your opinion that
10 Grace's identification with her mother's residence as being
11 the primary residence is probably healthier -- I was going to
12 say necessary, but that is probably a little too far. That
13 it is appropriate, do you think?

14 A. Taking into consideration her age and developmental
15 level, yes.

16 Q. Okay. In the course of your time with Grace and
17 the Claytons, have you become concerned about perhaps some
18 ADD -- potential ADD problems with Grace?

19 A. Yes.

20 Q. Okay. And what is your opinion in that regard?
21 How has it come up? What is it about her that has caused you
22 to notice that or be concerned about?

23 A. Her lack of boundaries, her busyness, her
24 impulsivity. They usually do not test for ADHD until once
25 the child is in school because then you can chart how many

1 out-of-seat behaviors and that type of thing.

2 But her attention span, she is a bright little
3 girl, but she's very easily distracted. She's very -- her
4 lack of concentration because of the distractibility. Her
5 high risk behavior, no fears as far as boundaries. Comes
6 bounding into my office, snoops in everybody else's -- or
7 snooped in my partner's office prior to our appointment.
8 Those type of things.

9 Q. All right. Is stability and continuity of care, is
10 that an important factor in dealing with ADD, whether it is
11 diagnosed or potential?

12 A. Yes.

13 Q. Okay. And I don't want to put words in your mouth,
14 but is it safe to say that the greater the continuity, the
15 greater stability, the greater -- or the less problem that
16 the ADD might evidence; is that correct?

17 A. Correct.

18 Q. All right.

19 MR. ALBACK: I have nothing further of this
20 witness, Your Honor.

21 THE COURT: Thank you.

22 MR. ALBACK: Thank you, Doctor.

23 CROSS-EXAMINATION

24 BY MR. RINDAL:

25 Q. Good afternoon, Ms. Macki.

1 A. Good afternoon.

2 Q. I hope you -- I apologize for not calling you
3 Dr. Macki, but they are misidentifying you, you are not
4 Dr. Macki --

5 A. No, I am not.

6 Q. Your a master's, just to clarify the court record
7 and Mr. Alback's information.

8 We have worked before together, haven't we?

9 A. Yes, sir.

10 Q. And I respect your opinion and I'm glad you are
11 here. When did Ms. Clayton contact you?

12 A. Our initial visit was February 11th.

13 Q. Of this year?

14 A. Yes, sir.

15 Q. Okay. Did she share -- did Ms. Clayton share with
16 you at that time what the parenting plan was?

17 A. Yes.

18 Q. Okay. Have you discussed with Ms. Clayton that
19 Mr. Clayton was requesting additional time with his daughter?

20 A. No, I have not.

21 Q. Okay. Has that ever come up, until today?

22 A. Correct.

23 Q. Okay. You are not privy to the court documents,
24 but we're not requesting primary residence be changed, and
25 certainly your testimony sounds like Grace has identified the

1 primary residence, at least her focus of location, is with
2 Mary Beth; is that correct?

3 A. Correct.

4 Q. Okay. Do you believe it's important for children,
5 especially young children, to spend as much time with both
6 parents as possible?

7 A. If it is in a healthy relationship, yes.

8 Q. Okay. Well, let me ask you then, I believe you
9 testified that you have observed -- and how many times have
10 you seen Grace?

11 A. I'll have to count.

12 Q. Ten, 11 times, I think you said.

13 A. Nine.

14 Q. Nine times. Okay. I believe you testified that
15 you have observed that Grace is much bonded with both
16 parents?

17 A. Correct.

18 Q. Okay. And I believe you also testified -- and this
19 is almost a quote, she has a very healthy relationship with
20 both parents?

21 A. Correct.

22 Q. Okay. So keeping that in mind, that she has bonded
23 with both parents quite well, and she has a very healthy
24 relationship with both parents, is it then beneficial to a
25 child to spend as much time with both parents, in a difficult

1 situation such as a divorce, or to minimize contact with one
2 parent?

3 A. I would say spend as much time -- and once again I
4 want to qualify that, if it is healthy, good quality time.

5 Q. Okay. But you said that they have a very healthy
6 relationship?

7 A. That is what was demonstrated to me, yes.

8 Q. Do you have any other indication or observation
9 that would make you believe that they don't have a healthy
10 relationship?

11 A. Grace had said some things to me, and I addressed
12 this with both parents. Some of the concerns that she had
13 said is that her daddy Steven has called her step -- I don't
14 know what to call him, but has called mother's significant
15 other, trash, garbage, trash bags, that type of thing, which
16 does make this child -- I think is difficult for this child.

17 So if that were to cease, then I think it is much
18 health -- would be much healthier.

19 Q. And you've discussed that with Mr. Clayton?

20 A. I brought it up to Mr. Clayton that she had said
21 that. At that point he seemed very surprised that she would
22 say that. And it was my indication that he wasn't sure where
23 she would have gotten that information.

24 Q. Okay. Have you -- since you discussed that with
25 him, and I don't know, I think you saw him twice, has there

1 been any other reports of allegedly improper communication?

2 A. No, because I just saw Grace one other time, and
3 that once again was with her father. And she didn't say --
4 when her father is there, she doesn't state anything about
5 this Ronnie.

6 When her father is not there, one time we were
7 playing the Barbies, she took the men -- we have two men
8 dolls, and we named one as Ronnie, one as Steven. She took
9 the Steven doll, went over, slammed the Steven doll against
10 the Ronnie doll and said, her daddy doesn't like Ronnie, and
11 she didn't want Ronnie there, so that the Steven doll was
12 very aggressive towards the Ronnie doll.

13 Q. And I believe you said -- you indicated that the
14 counseling that you have been doing with Grace, is not
15 related so much to divorce, but more about anxiety, boundary
16 issues and manic complaints; is that correct?

17 A. That is what she came to see me as, those were the
18 initial issues. As we have worked, I have worked with her as
19 far as the loyalty, the fact that she feels -- just -- that
20 was one of the first sessions, just to get an idea of where
21 this child was at. We did the dolls, trying to help this
22 child relieve some of the anxiety.

23 I feel that she feels torn between her loyalties.
24 I know that she -- when her father, in front of her father
25 she did not, as I said before, talk about this Ronnie at all.

1 In front of her mother she feels much more
2 comfortable talking about both parties. And right there, it
3 led me to feel that this child feels real torn. When with
4 mom it is okay to feel this; with dad, she can't feel this;
5 with mom, she says negative things about dad; but with dad,
6 she doesn't want to address anything.

7 I would bring the things out, and the first time
8 Steven came, everything we tried to do she says, I don't like
9 this, I don't like this game.

10 Q. Now, I believe you have seen Grace nine times
11 total, you said?

12 A. Correct.

13 Q. Two times with Mr. Clayton, so that, I'm guessing,
14 seven times then with Mrs. Clayton?

15 A. In the room, yes.

16 Q. Sure. Would it be beneficial to continue the
17 counseling with Mr. Clayton in there so that possibly Grace
18 would start to feel more comfortable communicating?

19 A. And I'm comfortable with that, yes.

20 Q. Sure. And you think that would be beneficial then?

21 A. Yes.

22 Q. I believe you said, you testified that you have
23 counseled 50 to 100 clients, and I know you said, you
24 testified you thought as than expert over 50, but possibly as
25 high as 100.

1 A. Yes.

2 Q. In those -- let's just round it to 100, just in
3 case. In those hundred cases, is this the first case of a
4 four-year-old girl in a divorce case where she expresses
5 anxiety and misunderstanding and communication problems like
6 she is doing now, like Grace is specifically?

7 A. No, sir.

8 Q. Is it a very normal thing?

9 A. Yes, sir.

10 Q. Okay. So nothing really -- this is not like a huge
11 warning sign, but it is definitely something the parents need
12 to work on, their communications?

13 A. Correct, and the fact that she is having some manic
14 complaints.

15 Q. Sure. Sure. When you had Mr. Clayton in the
16 counseling sessions those two times, when did they first
17 start?

18 A. Just recently.

19 Q. Mm-hmm.

20 A. The first one was June 3rd.

21 Q. Okay. And whose scheduled those?

22 A. Steven called, I asked Mary Beth if I would be able
23 to see and meet with Steven and Grace as well.

24 Q. Mm-hmm.

25 A. And she notified Steven and he called me and

1 scheduled.

2 Q. Okay. Is it -- is it common in your -- the
3 counseling profession to counsel with one -- during a divorce
4 case, shall we say, to counsel with just the child and one
5 parent only, or do you try to incorporate both parents in?

6 A. I try to incorporate both parents.

7 Q. Okay. Is it your -- using your many years of
8 experience with client counseling, do you believe that if you
9 have continued counseling sessions between -- with Grace and
10 Mr. Clayton, that she will become less anxiety-ridden and
11 lose maybe some of the manic complaints that she has now?

12 A. That is our goal.

13 Q. Okay. All right. And do you believe, then, that
14 if -- if Mr. Clayton is allowed to spend more time with her
15 and be it in your office and outside your office, that that
16 might help facilitate better communication skills between
17 them, the daughter and the father?

18 A. Yes, if it is appropriate.

19 Q. Okay. Well, it is a very nebulous term,
20 appropriate. Do you have some guidelines or suggestions
21 that what you would consider or feel safe suggesting that
22 would allow Mr. Clayton to spend more time with his daughter,
23 that you would consider safe or appropriate?

24 A. And I have talked to Mr. Clayton about this, we
25 talked about Grace's developmental level, that at her age she

1 is not able to abstract. Some of the things that he just
2 says in passing like, he is going to move, and then he talked
3 about his parents coming. Somehow Grace surmised that her
4 dad was moving to California to live with his parents.

5 So we just kind of talked about developmental type
6 of things. My suggestion would be not to even address her
7 mother's living situation, to just make the relationship that
8 he has with Grace as positive as can be. She does have a
9 good relationship with him, she enjoys going to movies with
10 him.

11 We talked about -- she mentioned she was afraid in
12 her bedroom at his house and he decided it was probably
13 because of real dark curtains. He has got night lights, just
14 simple little things like that, to make it less of an
15 adjustment for her.

16 Q. So is it your belief that Mr. Clayton is responding
17 appropriately to some of her fears or problem areas in
18 communication?

19 A. Yes.

20 Q. And with this idea of her developmental -- and I
21 understand that, you know, she is four years old and they
22 grow quickly, but she has a lower level of abstract thinking,
23 or actually she hasn't even attained that level, correct?

24 A. Correct.

25 Q. So isn't it true that she may be picking up pieces

1 of sentences or communications and extrapolate them into some
2 concrete, this is happening?

3 A. Correct.

4 Q. Okay. So is it possible, then, that what Grace
5 said about -- that her daddy hates Ronnie or whatever, she
6 could have picked up just saying that they are going through
7 a divorce, that he is upset that, you know, he is no longer
8 in her life everyday; is that possible?

9 A. Yes.

10 Q. Regarding the moving and the moving to California,
11 are you aware that the parties have to sell their house?

12 A. Yes.

13 Q. Okay. So that is what he means by moving, and his
14 parents did come from California. So, I mean, do you have a
15 grasp -- are you able to discuss that with her now?

16 A. We talked about it on Tuesday, yes.

17 Q. Great. Great. Is there any other suggestions or
18 guidelines that can be provided today from you to the Court
19 and Mr. Clayton that you would be comfortable with that would
20 allow Mr. Clayton to spend more time, that would be
21 beneficial for Mr. Clayton to spend more time with his
22 daughter?

23 A. One other time she had said that -- let me find,
24 she said, just out of the blue, we were playing a game and
25 she says her mommy breaks her daddy Steven's heart because

1 she won't live with her daddy Steven. And she said that her
2 daddy told her that her mommy has an ovy in her head and it
3 it's inside so that she can't see it, but it breaks daddy's
4 heart.

5 And I can understand him trying to explain, and
6 regardless of him -- his explanation, her comprehension. I
7 think many times children begin -- they see parents display
8 feelings of sadness, some depression, and children feel that
9 they are responsible for that.

10 Q. Certainly.

11 A. So I'm concerned that Grace may feel that she is
12 responsible for her daddy's emotional being. So rather
13 than -- whether you said it or not, I don't know, but the
14 fact that this is what she shared with me, it might be easier
15 just to not even discuss.

16 THE COURT: Dr. Macki, I have a question having
17 heard you and read your reports on many occasions, wouldn't
18 it be a more practical solution in this particular case to
19 require further counseling between Steve and this child and
20 yourself, more counseling before we go into spending more
21 time with this child.

22 THE WITNESS: Correct.

23 THE COURT: That would be your bottom line
24 recommendation, wouldn't it?

25 THE WITNESS: You're right, Your Honor.

1 BY MR. RINDAL:

2 Q. Do you have a suggestion, then, to the Court and to
3 myself and Mr. Clayton what you would think would be
4 appropriate? What type of counseling, how much counseling
5 between Mr. Clayton and Grace and yourself before he is
6 allowed to spend more time?

7 I'd like to kind of pin this down so when we leave
8 today, we can -- that is a goal that we need to start working
9 towards.

10 A. Mm-hmm. And, truthfully, I haven't talked with
11 either party to know what their future plans are. I don't
12 know if she has extended time according to the interim
13 parenting plan to have any vacation time with her father.
14 I'm not aware of the current, other than the alternating
15 weekends and twice during the week. I'm not aware of the
16 rest of the interim parenting plan.

17 To answer your question, I would say to meet one,
18 two more times, maybe more often than alternating weeks. And
19 some of that we'll have to discuss as far as the logistics
20 with insurance, etcetera.

21 And then I would like to meet with Grace without
22 either parent.

23 Q. Certainly.

24 A. Just to see where -- I know that she and I have a
25 good enough relationship, she certainly is very free-flowing

1 on what she has to say, that I could surmise if in fact
2 it's -- she has less anxiety, it will also show in her lack
3 of tummy aches, her lack of scary dreams, running to mom and
4 dad in the middle of the night because of her night -- her
5 scary dreams.

6 Q. Sure. And I apologize, I was listening to the
7 whole long sentence, and I missed the outlying thing. Did
8 you say you thought possibly one or two more times of
9 counseling before any more extended time or --

10 A. When you are saying --

11 THE COURT: I think it is a matter of quality time
12 and what she can accomplish.

13 MR. RINDAL: I understand, Your Honor.

14 THE COURT: And you are once again invading my
15 province, too.

16 MR. RINDAL: Your Honor, she is an expert witness.
17 I want to get suggestions from her so we can organize this.

18 BY MR. RINDAL:

19 Q. Ms. Macki, you had mentioned that Steve was allowed
20 to see his daughter for a couple times a week, I believe. I
21 don't recall the days, maybe Wednesday, something like that,
22 for a couple hours. If that happens to coincide with one of
23 his days off, would it be okay if he spent a few more hours,
24 instead of two hours, he is allowed two hours, I believe, on
25 his nonweekend days, weekend cycles, perhaps two or three

1 more hours might -- is that going to cause a problem?

2 MR. ALBACK: Your Honor, I'm not objecting so much
3 as clarifying. The witness, if she is going to answer a
4 hypothetical question, it should be based upon the facts.
5 And the facts are that Mr. Clayton is entitled to two
6 four-hour periods per week -- during the week days of every
7 week, not the two hours that Mr. Rindal is talking about.

8 And if he is talking about two hours and would two
9 or three more hours be helpful when he is already getting
10 four hours, it makes a big difference as to what we're really
11 talking about here.

12 So the record speaks for itself in terms of what
13 the order is of this Court and what is in force at this point
14 in time, and that is that that child spends four hours two
15 nights per week with Mr. Clayton as it is.

16 Thank you.

17 MR. RINDAL: And that is correct. I didn't have
18 the document in front of me, and I apologize, it wasn't -- it
19 was a misspoken statement. I just knew he got two times, and
20 I apologize. It is four hours. And Mr. Clayton just
21 confirmed that.

22 BY MR. RINDAL:

23 Q. And my question still remains: If we get one or
24 two more times of counseling, then would you be willing to
25 submit to the Court posttrial suggestions of giving --

1 allowing Mr. Clayton additional time rather than us having to
2 wait for a report and then do it -- request a show cause to
3 amend the parenting plan again. My goal and Mr. Clayton's
4 goal is to see his daughter as much as possible, and --
5 because of the Court's calendar, it is very full, they are
6 very -- they are definitely not underworked.

7 MR. ALBACK: I don't see a question here, Your
8 Honor. I see a --

9 THE COURT: Just please rephrase your question.

10 MR. RINDAL: Certainly.

11 BY MR. RINDAL:

12 Q. Ms. Macki --

13 THE COURT: What is her recommendation. Bottom
14 line, what is your recommendation.

15 THE WITNESS: Do I feel that it would be
16 difficult -- or be difficult for Grace to spend more time
17 with her father on his days off other than four hours. My
18 recommendation would be at this point that it would not be,
19 but I think that he needs -- my suggestion would be that he
20 contact the mother, making sure that it will not interfere
21 with any other plans that Grace already has.

22 Children at this age, if she has a birthday party,
23 that is a major thing for a child. Any of the -- to
24 accommodate any of her plans, plans that the family may
25 already have.

1 If it all coincides, then I think that it would
2 benefit her to spend time with her father.

3 MR. RINDAL: Great. Okay. Does that clarify,
4 Mr. Alback the question?

5 MR. ALBACK: There was a question in there, I
6 appreciate that very much. Thank you.

7 MR. RINDAL: Thank you.

8 BY MR. RINDAL:

9 Q. And my other question that I'd asked you is, upon
10 counseling, additional counseling between yourself, Grace and
11 Mr. Clayton, would you be willing to provide an additional
12 report to both attorneys so that we can attempt to modify, if
13 you so deem it acceptable, to add additional time rather than
14 forcing -- making us have to go back in front of the Court?

15 THE COURT: Well, Mr. Rindal, I believe that the
16 bottom line is that your client hasn't been paying for this
17 kind of counseling in the past. And you'll have to have some
18 plan in effect before your question can be answered, I
19 believe.

20 MR. RINDAL: You are right, Your Honor. I don't
21 think either party pays. I don't believe either party pays
22 at all.

23 I have nothing further. Thank you, Ms. Macki.

24 THE COURT: Thank you.

25 MR. ALBACK: I have no further questions, Your

1 Honor.

2 THE COURT: You are excused.

3 MR. ALBACK: Petitioner rests as well.

4 THE COURT: We will take a ten-minute break. We'll
5 be in recess for ten minutes.

6 (Recess.)

7 THE COURT: Court is in session. You may be
8 seated. Mr. Rindal, you may proceed.

9 MR. RINDAL: Thank you, Your Honor. I would like
10 to call Mr. Steve Clayton to the stand. Steve, would you
11 please go up and be sworn in by Carol.

12 STEVE CLAYTON,
13 called as a witness, and having been first duly sworn, was
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. RINDAL:

17 Q. Steve, would you please state your name for the
18 record?

19 A. Steven Lloyd Clayton.

20 Q. And you are the respondent in this matter?

21 A. Yes.

22 Q. You heard the jurisdictional testimony from your
23 wife, do you agree that this marriage is irretrievably
24 broken?

25 A. Yes.

1 Q. Okay. Is there any chance of reconciliation?

2 A. I wouldn't think so, no.

3 Q. Okay.

4 MR. RINDAL: Getting right into this, Your
5 Honor -- oh, Your Honor, for the matter, Mr. Alback and I
6 both agree that Mr. Frigaletti can -- Dr. Frigaletti
7 (phonetic) can come, sit and listen. I've taken him off the
8 witness list, he'd just like to sit in and listen for awhile.

9 May I approach the witness, Your Honor?

10 THE COURT: You may.

11 MR. RINDAL: Here is a bench copy, Your Honor.

12 BY MR. RINDAL:

13 Q. Steve, I have just handed you a document that has
14 been marked Respondent's Exhibit A. Do you recognize that
15 document?

16 A. Yes, I do.

17 Q. Okay. What is that exhibit?

18 A. This is our proposed division of assets and debts.

19 Q. Okay. I'm going to skip over the assets because
20 prior to the trial -- commencement of the trial, we have
21 stipulated with opposing counsel that we're going to use our
22 asset distribution. If there is any clerical error,
23 Mr. Alback and I will correct it, but this is the same
24 document that Mr. Alback and I presented with the pretrial
25 order.

1 The last page is page 3. Would you please turn
2 to that page.

3 A. Yes, I am there.

4 Q. Okay. I want to go down those one by one. Is it
5 your belief that the home mortgage owed against the house is
6 approximately \$72,000?

7 A. Yeah, approximately.

8 Q. Okay. And it is you and Mary Beth's intention
9 to -- excuse me, Ms. Clayton's intention to sell the house?

10 A. Yes.

11 Q. Okay. And I have listed two Chase credit cards,
12 one for approximately 255 and one approximately 1,091. You
13 have proposed that that debt be split between you and your
14 wife; is that correct?

15 A. Yes.

16 Q. Okay. And why do you believe that that splitting
17 the debt is equitable, 50/50?

18 A. Well, we both used the couch, we both ate the food.
19 Her revolver that she carries now is -- was bought with that.
20 I mean, we both, you know, accumulated this debt. I mean, I
21 couldn't go dollar for dollar what she spent and what I
22 spent, but...

23 Q. Could you please speak up.

24 A. Oh, sorry. It was -- I mean, it was close to 50/50
25 as I can -- I mean, we both ate the food and, I mean, that is

1 what we lived on for some of the time.

2 Q. Okay. She testified that she thought only
3 approximately 20 percent of the credit card debt was due to
4 food; is that your recollection?

5 A. No.

6 Q. What is your recollection?

7 A. I would say about 50 percent.

8 Q. Okay. And some of -- some of the items -- she
9 testified that the items from this debt, these two credit
10 cards, the Chase ones, are property that you are retaining;
11 is that accurate?

12 A. Well, there is some property that I'm retaining,
13 and I had mentioned the revolver, she is keeping that. And
14 also I had been paying on the credit card most of the time
15 that she had been separated from me, until around December.

16 Q. Okay. How much was the revolver, as an example?

17 A. I believe it was 327.

18 Q. Okay. We listed a First U.S. card, but I think
19 Ms. Clayton said that is called something else now, Bank One.
20 We didn't know the dollar amount, do you have any idea how
21 much that is?

22 A. I have no idea. The bank card companies won't let
23 me access any information. The only information I could get
24 was through Genus Credit, where I had changed the account
25 over to my name in June, late June after she had left. And

1 they couldn't -- they wouldn't release the information to
2 Genus.

3 Q. Ms. Clayton testified that she thought it was
4 something approximately \$2,491 on that credit card, First
5 U.S. card that we have listed. Do you have any reason to
6 believe that that is not correct?

7 A. No.

8 Q. So you believe that it is probably approximate?

9 A. Probably.

10 Q. Okay. And that is her credit card?

11 A. Right.

12 Q. Do you remember what the balance was on that credit
13 card while you were still together?

14 A. Probably about 3900, I think.

15 Q. Okay.

16 A. Close to 4,000.

17 Q. And you've paid down an amount before?

18 A. Right.

19 Q. Until December?

20 A. Right. \$213 a month.

21 Q. You paid \$213 a month since -- until December?

22 A. Right.

23 Q. And that is -- I think it was your wife's testimony
24 that she thought she was paying \$100 a month since December.

25 A. Right.

1 Q. Okay. We have a vehicle loan to Steve and Mary
2 Beth from your parents. It's listed at approximately
3 \$17,000. You heard Ms. Clayton's testimony that that is your
4 loan; is that your recollection?

5 A. No.

6 Q. Why do you have this separated, half and half?

7 A. Well, the reason is because we both benefited from
8 this.

9 Q. And how did you benefit from that loan?

10 A. Well, we -- after I had lost my position with
11 Express Trailer, I had to, you know, find another position,
12 wasn't finding one because of summer employment problems.
13 And then we lived off it until, I think she said, around
14 February or so, which we paid for the mortgage, food, you
15 know, gas, you know, just all living expenses. Purchased a
16 computer with that.

17 Because I was going to be attending school, I
18 needed a computer that was capable of connecting to the
19 Internet. And we purchased that. She used it for her grad
20 school work when she was going to educational grad school.
21 So...

22 Q. So she used some of the proceeds also --

23 A. Certainly.

24 Q. -- when she went to college?

25 A. Certainly.

1 Q. Okay. Does she have a degree?

2 A. Yes.

3 Q. What is her degree?

4 A. A degree in fine arts, bachelor's.

5 Q. Bachelor's degree. And you have a degree in
6 history?

7 A. History.

8 Q. Okay. Is that a bachelor's of science or bachelor
9 of arts?

10 A. Arts.

11 Q. Okay. So you both have the same educational degree
12 right now?

13 A. Right.

14 Q. And she -- you heard her testify she'll take her
15 student loan and you'll take your student loan; do you have
16 any objection to that?

17 A. No.

18 Q. Okay. She testified that she never made any
19 payments to your father on that -- what was originally a
20 \$19,000 loan; is that accurate?

21 A. No.

22 Q. Do you recall how many -- how much money that she
23 paid?

24 A. It was a total of \$2100.

25 Q. Okay. Have you still been making the payments?

1 A. No, I haven't been able to.
 2 Q. Okay. How much do you make right now?
 3 A. I make \$7.54 an hour. I work on an average of
 4 32 hours a week. Best Buy, as a full-time employee, is 32
 5 hours minimum. Since we are having kind of a company wide
 6 budgetary problem, that is all I'm limited to right now.
 7 Q. Okay. Do you believe that the Court should adopt
 8 your proposed assets and debt distribution?
 9 A. Yes.
 10 Q. Do you think it is fair and equitable?
 11 A. Yes.
 12 MR. RINDAL: Your Honor, I'd move for admission of
 13 Respondent's Exhibit A.
 14 MR. ALBACK: I have no objection to this. I
 15 thought it had already been filed with the Court. I have no
 16 objection, Your Honor.
 17 THE COURT: Respondent's A is admitted.
 18 (Respondent's Exhibit A was admitted.)
 19 MR. RINDAL: May I approach the witness, Your
 20 Honor?
 21 THE COURT: You may.
 22 MR. RINDAL: Here is a bench copy, Your Honor.
 23 BY MR. RINDAL:
 24 Q. Steve, I have just handed you a document. Do you
 25 recognize that?

1 A. Yes.
 2 Q. It is marked Respondent's Exhibit B. What is that
 3 document?
 4 A. This is the proposed parenting plan of mine.
 5 Q. Okay. In that parenting plan you have requested
 6 additional time, specifically you would like to have a week
 7 on, a week off, correct?
 8 A. Right.
 9 Q. Do you believe that Grace is substantially mature
 10 enough to benefit from having a week on, a week off with you?
 11 A. Certainly.
 12 Q. Okay. And you have proposed that you alternate
 13 the tax exemption between you and your wife?
 14 A. Yes.
 15 Q. Do you think that is fair?
 16 A. Certainly.
 17 Q. Okay. Are you and your wife now currently handling
 18 transportation? I mean, is there any transportation issues
 19 that have arisen?
 20 A. I think only once my car broke down and she had to
 21 come and pick up my daughter.
 22 Q. But other than that?
 23 A. Other than that, no.
 24 Q. Okay. Now, you heard Ms. Macki testify that if
 25 you apparently have one or two more counseling sessions,

1 you'll probably be allowed to spend more time with your
 2 daughter. It appears that the Judge is not inclined and --
 3 to grant half and half, and maybe at four years old that
 4 might be too young.
 5 In the alternative, would you at least like the
 6 Judge to allow you the right of first refusal and to allow
 7 you to have your days off in the middle of the week with your
 8 daughter?
 9 A. I mean, that's -- I see no problem with my daughter
 10 spending time with me. But -- and I will -- I will accept
 11 it. I mean, certainly I want more, but I will accept it.
 12 And I'll go to counseling or whatever I have to do to make
 13 sure my daughter is, you know, mentally fit.
 14 Q. Right now is it -- is it approximately four full
 15 days that you get to spend with your daughter per month?
 16 A. Yes.
 17 Q. Okay. And then to clarify, because I misspoke
 18 earlier, you see her two times a week during the middle of
 19 the week sometimes?
 20 A. Yes.
 21 Q. And what is that from?
 22 A. While I was going to school, I had to change the
 23 nights from Monday and Wednesday to Monday and Thursday
 24 because I had a night course. So it's pretty much stuck
 25 Monday and Wednesday. So I pick her up, I generally pick her

1 up about 3:15 on Mondays and also Thursdays. I get off of
 2 work at about 2:30, so I go home and shower and go and pick
 3 up my daughter.
 4 Q. Okay. Now, you heard your wife testify that she
 5 believes that you shouldn't spend extra time with your
 6 daughter because it might be disruptive, and she did discuss
 7 about your -- your work schedule. How far in advance does
 8 your employer schedule your work?
 9 A. The alternating weekends that is already set in,
 10 they have a computer program that sets up the days off I
 11 need. Also we have the ability to say, I need Tuesdays off
 12 for the rest of my work career with you.
 13 I can -- I am -- I am to the point where I am so
 14 valuable on the company that they'd pretty much do anything
 15 for me. The pay, you know, that is a different matter. But
 16 with scheduling, they know what I'm going through, and you
 17 know, they are worried about my daughter, so...
 18 Q. Well, would -- I guess the question I was asking
 19 you, how far in advance do they make the schedule?
 20 A. My supervisor looks at it, it's usually about five
 21 or six days.
 22 Q. Okay. So nearly a week, five to six days?
 23 A. Right.
 24 Q. Do you believe you'll have the ability to request a
 25 specific day such as a Tuesday or a Wednesday or Thursday?

- 1 A. I have never had a problem.
 2 Q. Okay. And if that would assist in giving
 3 stabilized time with your daughter, and at the request of
 4 both your wife and Ms. Macki, are you willing to do that?
 5 A. Yes.
 6 Q. Okay. So if you are allowed to spend additional
 7 time with your daughter, you're testifying here today you will
 8 make a specific date schedule and that will stay in stone,
 9 absent some emergency?
 10 A. Oh, yeah, that wouldn't be a problem.
 11 Q. Okay. Ms. Macki has indicated that you and your
 12 wife both have a very healthy relationship with your
 13 daughter, do you believe that that is correct?
 14 A. For the most part.
 15 Q. And she said -- Ms. Macki said that she believed
 16 that you and your wife both have bonded -- or excuse me, your
 17 daughter has bonded with both you and your wife; do you
 18 believe that?
 19 A. Certainly.
 20 Q. Okay. Do you believe that it is in your daughter's
 21 best interest to spend more time with you?
 22 A. Yes.
 23 Q. You have four full days a month. What do you
 24 think -- I believe you said you want half time, one week on
 25 and one week off?

- 1 A. Right.
 2 Q. If that is not able to be done, what would you
 3 request?
 4 A. I mean, the bear minimum would be -- you know, if
 5 I am -- if I have my day off and she is at work, there is no
 6 reason that I wouldn't be able to see my daughter. I mean,
 7 Alice seems to be a great person, you know, her sitter. But
 8 I'm sorry to say, but the value of her relationship with
 9 Alice and the relationship with me, I think I'm quite a bit a
 10 head in the -- in the pecking order. I mean --
 11 Q. And I believe your wife testified that it is her
 12 belief that you only watch TV with your daughter, maybe
 13 occasionally go for a walk or go to Wal-Mart; is that
 14 accurate?
 15 A. No.
 16 Q. What do you do with your daughter when you spend
 17 time with her?
 18 A. Well, we -- it's kind of dangerous, but --
 19 dangerous in the fact that it is white colored carpet, I
 20 usually throw down a drop cloth in the family room and she
 21 can finger paint, and I have given her a brush so she can
 22 brush, we go picking flowers, we go for walks with the dog.
 23 We will go to my work and visit my friends there.
 24 I drive around, I'll go up north and I'll show her
 25 different -- you know -- you know, obviously she is not going

- 1 to know the difference between an igneous and a sedimentary
 2 rock, but, you know, I try to take her and have her get
 3 actually interested in science and everything around her.
 4 Q. Okay. Do you believe those are -- those are
 5 important in educational --
 6 A. Yes.
 7 Q. -- visits with her -- please wait for me to finish
 8 the question.
 9 A. Sorry.
 10 Q. I guess I have a question about a discussion with
 11 your daughter. You heard Ms. Macki talk about she is a very
 12 ab -- or excuse me, concrete thinker right now. Did you tell
 13 your daughter you had to move?
 14 A. No. Well, I told her -- she wanted to know what
 15 all the boxes were for. And I said, well, I have to get a
 16 new house here in town. And she goes, where Montana? I
 17 said, yeah, Montana. And she thinks that my wife lives in
 18 Montana and I live somewhere else. It's kind of -- and we're
 19 only two miles apart.
 20 Q. Okay.
 21 A. So her whole ability to judge geographical
 22 location, is skewed.
 23 Q. Okay.
 24 A. I had mentioned that my parents were going to be
 25 coming up from California and she, I guess, somehow tied in

- 1 my parents and moving.
 2 Q. Okay. Well, let's talk about your parents coming
 3 to visit. You heard your wife testify that she has never,
 4 and does not, restrict your visits with your daughter. Is
 5 that accurate?
 6 A. No.
 7 Q. Can you give a very recent example?
 8 A. Well, my daughter had a really high fever in March,
 9 it was to the point where she had -- I mean, when I picked
 10 her up from her sitter's, Alice Mills, she was ill, and I
 11 took her to the hospital right away and they gave her Tylenol
 12 and reduced the fever.
 13 The next night was supposed to be my night that I
 14 was supposed to have her. That night also was going to be my
 15 scheduled -- scheduled night, and she said, well, because of
 16 Gracie's health, I'm only allowing you one day this week.
 17 Q. Have you taken care of her -- Grace when she is
 18 sick?
 19 A. Yes. Actually I exposed myself to chicken pox to
 20 take care of her.
 21 Q. Can you think of any good reason why your wife only
 22 allowed you one weekend because of her being ill?
 23 A. You know, I -- all I can surmise is spite.
 24 Q. Okay. Was there something recent, such as on the
 25 17th? Were you allowed to see your daughter on the 17th of

1 June?
 2 A. The 17th of June was when I was scheduled to take
 3 her to Dr. -- or Mary Macki. And she had requested -- Mary
 4 Beth told me that I was to take her back to Alice's before
 5 lunch time.
 6 Q. Why?
 7 A. She never gave me a reason.
 8 Q. Your parents were here from California?
 9 A. Right.
 10 Q. And she wouldn't allow you to spend a few more
 11 hours with her?
 12 A. I guess not.
 13 Q. Okay. Your wife testified that Grace needs a
 14 routine to minimize some of the anxiety she has. Do you
 15 have a routine when she stays with you?
 16 A. Certainly.
 17 Q. Okay. And you've maintained that ever since you
 18 separated?
 19 A. She goes to bed at the same time, she doesn't stay
 20 up until ten o'clock, like I have been told that she does
 21 over at Mary Beth's house. And she goes to bed at 8:30. She
 22 knows she is supposed to brush her teeth before she goes to
 23 bed. At one o'clock in the afternoon, she goes and takes her
 24 nap.
 25 Q. Okay. So your respondent's proposed final

1 parenting plan and your belief provides for the best
 2 needs of your daughter?
 3 A. She needs her father in her life as much as she
 4 does her mother.
 5 Q. Okay.
 6 MR. RINDAL: Your Honor, I'd request that
 7 Respondent's Exhibit B be admitted.
 8 MR. ALBACK: I have no objection, Your Honor.
 9 THE COURT: B is admitted.
 10 (Respondent's Exhibit B was admitted.)
 11 MR. RINDAL: May I approach the witness, Your
 12 Honor?
 13 THE COURT: You may.
 14 MR. RINDAL: Thank you.
 15 MR. ALBACK: Your Honor, if I might interrupt. It
 16 appears that Mr. Rindal is going to be asking that these
 17 documents be admitted as his child support calculations. To
 18 save the time and trouble of the foundational matters, I'm
 19 certainly willing to stipulate to the entry of these
 20 documents.
 21 MR. RINDAL: Thank you, Mr. Alback.
 22 BY MR. RINDAL:
 23 Q. Steve, I'm handing to you what has been marked as
 24 Respondent's Exhibit C.
 25 MR. RINDAL: Your Honor, here is bench copy.

1 BY MR. RINDAL:
 2 Q. Do you recognize that document, Steve?
 3 A. Yes, I do.
 4 Q. Okay. What is that?
 5 A. This is -- it appears to be the child support
 6 calculations.
 7 Q. Okay. Now, I believe we put down that your wife
 8 makes approximately \$23,000. I don't remember the exact
 9 dollar amount, but I believe that was information provided by
 10 Mr. Alback. We have you down as 12,547 annually; is that
 11 12,547 what you make annually?
 12 A. Approximately, yes.
 13 Q. Okay. Now, this shows that you have earned income
 14 credit of 2,547. We have requested that the Judge alternate
 15 the tax deduction between you and your wife. This
 16 calculation is based on 110 days visitation, the standard
 17 visitation is 110 days a year. Certainly you are not getting
 18 that many, but 110 -- anything more than 110 will change the
 19 calculations. This is at 110.
 20 We have allocated \$2,600 for daycare costs. I
 21 didn't have that dollar amount until today. I think that is
 22 even high, so --
 23 MR. RINDAL: Am I right?
 24 MR. ALBACK: Your Honor, I'd also stipulate to the
 25 amounts in these documents as well. We have discussed the

1 income, the child support -- I mean the daycare costs and so
 2 on, so forth. Rather than belabor that before the Court, I'd
 3 be willing to stipulate as to the figures as well.
 4 MR. RINDAL: Your Honor, then I --
 5 THE COURT: Respondent's C is admitted.
 6 MR. RINDAL: Thank you, Your Honor.
 7 (Respondent's Exhibit C was admitted.)
 8 MR. RINDAL: May I approach the witness again, Your
 9 Honor?
 10 THE COURT: You may.
 11 MR. RINDAL: Bench copy, Your Honor.
 12 BY MR. RINDAL:
 13 Q. Steve, we're going to cut to the chase to save time
 14 here. This is a document marked as Respondent's Exhibit D.
 15 Do you recognize it?
 16 A. Yes.
 17 Q. This shows the same financial amount, 23,000 income
 18 for your wife, 12,547 for yourself, but it shows her earned
 19 income credit. This shows that she claims Grace for the
 20 child -- for the income tax deduction, and it has the same
 21 amount of daycare costs, \$2600.
 22 MR. RINDAL: Your Honor, I'll just move to admit.
 23 THE COURT: Is there any objection?
 24 MR. ALBACK: I'm sorry, Judge, no, I thought I
 25 stipulated.

1 THE COURT: Okay. D is admitted.
 2 (Respondent's Exhibit D was admitted.)
 3 MR. RINDAL: Thank you, Your Honor. And, Your
 4 Honor, just a clarification, since we have requested that the
 5 child tax return deduction be alternated, I provided both to
 6 show you the differences.
 7 THE COURT: Thank you.
 8 BY MR. RINDAL:
 9 Q. Steve, Mrs. Clayton testified about the last
 10 several years you haven't made much income. Would you agree
 11 that that is a fair assessment?
 12 A. Well, being a student doesn't usually pay too well.
 13 Q. How long have you been in college?
 14 A. On and off, I was in school for about 12 years;
 15 full-time, probably about four years.
 16 Q. Well, she was talking at least since 1998, that is
 17 when she started discussing your income. Did you start
 18 full-time or on a complete college degree in about 1998?
 19 A. Actually a year earlier than that --
 20 Q. Okay.
 21 A. -- I was attending full-time as an education
 22 student at Eastern at the time, and then Grace was born with
 23 her laryngomalacia, so I could no longer go through with that
 24 degree, so I stayed home.
 25 Q. Would you clarify for me, you said Grace was born,

1 and then you said some big word I didn't hear.
 2 A. Laryngomalacia, which was a -- it's a -- she had an
 3 immature epiglottis, which restricted her breathing. Any
 4 sort of cold or flu could become very serious and she could
 5 become hospitalized.
 6 Q. And did you and your wife take care of Grace at
 7 that time?
 8 A. I took care of her for, oh, I'd say two months
 9 until the doctor felt that it was okay for her to go into
 10 daycare.
 11 Q. Okay. Your wife has a college degree too, when did
 12 she start college, approximately?
 13 A. I think she graduated in '92 from high school
 14 and -- actually, let me see. Okay. She was 17 when she
 15 started college. She is 29 now. So 12 years ago.
 16 Q. Did she graduate from college before you married
 17 her?
 18 A. Yes.
 19 Q. Okay. And so I believe -- when did you get married
 20 again?
 21 A. December 30th, 1995.
 22 Q. Okay. So in 1995 she already had her college
 23 degree?
 24 A. Yes.
 25 Q. And is it fair to say that she has worked since

1 then until -- well, she is still working, right?
 2 A. Right.
 3 Q. Okay. And because of her either training or
 4 college degree she had better paying jobs than you?
 5 A. Yes.
 6 Q. And since 1997 you've been a full-time college
 7 student; is that correct?
 8 A. No, I can't say that. I haven't been -- the whole
 9 time I haven't gone full time. When I had some part-time
 10 positions, I also went to school part-time. But for the
 11 majority of the time later in our marriage, I was at school
 12 full time.
 13 Q. Okay. During the last several years, let's say
 14 since 1997 or '8, have you -- has your father been assisting
 15 you and Mary Beth with financials?
 16 A. Yes, thankfully.
 17 Q. Okay. Can you -- do you have any idea about how
 18 much your father has given you and Mary Beth?
 19 A. I have looked at the records, and I would say it's
 20 probably between ten and \$15,000 per year. And I don't even
 21 think that is including school, because I wasn't taking on
 22 student loans.
 23 Q. Okay. And did this money that your father gave to
 24 you and Mary Beth, did it benefit both you?
 25 A. Yes.

1 Q. It didn't go into just one of your secret accounts
 2 or anything, did it?
 3 A. No, I don't have any secret accounts.
 4 Q. What did you use all the money for?
 5 A. Rent. Actually the \$500 deductible when Grace was
 6 born. School. Let me see. You know, just living expenses.
 7 Mortgage, of course.
 8 MR. RINDAL: May I approach the witness, Your
 9 Honor?
 10 THE COURT: You may.
 11 MR. RINDAL: Your Honor, here is a bench copy.
 12 BY MR. RINDAL:
 13 Q. In fact, did your father help you buy a house?
 14 A. Yes.
 15 Q. I have handed you a document that is marked as
 16 Respondent's E. Do you recognize that?
 17 A. Yes, I do.
 18 Q. What is that document?
 19 A. This is a gift letter that my dad had to present to
 20 the Internal Revenue Service showing that it was a gift to me
 21 in the amount of \$20,000 so I could purchase a home.
 22 Q. Okay. And did this money go straight to the
 23 purchase of the house that you and Mary Beth currently own?
 24 A. Yes. Actually the cashier's check was made out to
 25 the bank.

1 Q. So you never actually touched this money, it
2 went --

3 A. No, I never got to see it.

4 Q. And it is on your behalf, he listed my son Steven
5 Clayton, that is you, correct?

6 A. Right.

7 Q. Okay.

8 MR. RINDAL: Your Honor, I'd move for the admission
9 of Respondent's Exhibit E.

10 MR. ALBACK: I object, there is no foundation for
11 this document, Your Honor, at all.

12 THE COURT: It proves your case. Respondent's E is
13 admitted.

14 (Respondent's Exhibit E was admitted.)

15 MR. RINDAL: May I approach the witness, Your
16 Honor.

17 THE COURT: You may.

18 MR. RINDAL: Here is a bench copy.

19 Your Honor, if I may have permission, I am not
20 going to submit this for -- to be accepted under this
21 witness, but just because of the course, I am -- my witness
22 who actually owns this document is waiting in the hall to
23 testify to it. I will, if Mr. Alback would permit me to ask
24 just a few questions, I have got like two questions on it,
25 and then all the foundation and all the actual accuracy will

1 be upon Mr. Art Clayton, who is in the hall.

2 Otherwise, I'll just have to call Mr. Steve Clayton
3 back to the stand after this.

4 THE COURT: I am not quite sure what you are
5 intending to do with this.

6 MR. RINDAL: Your Honor, I'll just wait.

7 Mr. Clayton, may I have that back, please. Thank you. May I
8 have those other documents.

9 THE WITNESS: Sure.

10 MR. RINDAL: I'll wait Your Honor.

11 BY MR. RINDAL:

12 Q. Steve, I believe you testified that you had got a
13 loan, you got a loan from your father, you and Mary Beth
14 needed a reliable vehicle, is that why you got the loan?

15 A. We purchased a vehicle through Fichtner Chevrolet,
16 and the money was loaned to us by my father.

17 Q. Okay. Well, let's talk about that for a minute.

18 You say we purchased a vehicle through Fichtner's, that
19 contradicts what Ms. Clayton said. She said she had nothing
20 to do with that.

21 A. Mm-hmm.

22 Q. Is that accurate?

23 A. No.

24 Q. Well, what did you do? You went to -- what are you
25 contending happened?

1 A. Well, it almost sounds like she had no -- she had
2 no idea that it was being done. And the funny thing is, is
3 we went down together and picked out the options. We talked
4 to the sales manager, and since my dad is a General Motors
5 employee, we had to go through the sales manager. So we sat
6 down there and picked out the options together. We picked
7 out the color, we picked out the fabric, we picked out
8 everything.

9 And we had had trouble with the vehicle that we
10 owned before, I had an older Taurus and so I wanted to get
11 something more reliable. And also I -- I mean, it was -- it
12 was us.

13 Q. And so is it your contention that your wife
14 assisted you in purchasing or picking out the pickup?

15 A. Yes.

16 Q. For your family?

17 A. And we got the extra cab because she wanted the
18 extra cab, because when we are going to have kids, you know,
19 we wanted to have, you know, room in the back.

20 Q. Okay. And then you purchased the vehicle; is that
21 correct?

22 A. Yes. Yes.

23 Q. Where is that vehicle now?

24 A. I have seen it drive around town.

25 Q. No, let me clarify. Do you still own it?

1 A. No.

2 Q. Okay. What did you and Mary Beth do with it?

3 A. We sold it.

4 Q. Why?

5 A. Because I had lost my position with Express
6 Trailer, we needed money to live on. I didn't know how
7 long it was going to be until I could find another position.
8 So we bought a fairly -- fairly new Oldsmobile Achieva, and
9 so we had a reliable piece of transportation, also got cash
10 from that downgrading.

11 Q. Do you recall approximately how much cash that you
12 and Mary Beth received?

13 A. It was around \$11,000.

14 Q. And did that \$11,000 go into your joint marital
15 account?

16 A. Yes. We had no other accounts except for our joint
17 account.

18 Q. And what did you and Mary Beth do with that
19 \$11,000?

20 A. Lived off of it, purchased a computer. That is
21 pretty much it, we lived off of it.

22 Q. Okay. So is it your contention that that is a
23 joint marital debt that you owe your father?

24 A. Yes.

25 Q. And do you have an approximate idea how much that

1 was worth -- or the debt?

2 A. The debt is calculated around \$17,400.

3 Q. That is right. And that was already included in
4 one of those documents.

5 MR. RINDAL: Your Honor, may I approach the
6 witness?

7 THE COURT: You may.

8 MR. RINDAL: Thank you. Here is a bench copy, Your
9 Honor.

10 Your Honor, I apologize for having these out of
11 order, but I've just handed the document, Respondent's
12 Exhibit G, to the -- to Steve Clayton.

13 BY MR. RINDAL:

14 Q. Steve, do you recognize this document?

15 A. Yes, I do.

16 Q. This is our proposed findings of fact and
17 conclusions of law. Have you reviewed this document?

18 A. Yes, I have.

19 Q. Do you believe it accurately reflects your
20 contentions of what the facts are --

21 A. Yes.

22 Q. -- in this case? And does it accurately reflect
23 what you believe the conclusions of law to be?

24 A. Yes.

25 MR. RINDAL: Okay. Your Honor, I'd move for

1 admission, demonstrative purposes only, Respondent's
2 Exhibit G.

3 THE COURT: Well, all of your exhibits are
4 demonstrative purposes only, I believe.

5 MR. RINDAL: Certainly, Your Honor.

6 THE COURT: Is there any objection?

7 MR. ALBACK: No, I have no objection to these, Your
8 Honor.

9 THE COURT: I'd point out, though, I think they
10 were due about three days ago.

11 MR. RINDAL: Your Honor, Mr. Alback and I had a
12 problem in getting -- hooking up the right time and getting
13 all the information exchanged.

14 (Respondent's Exhibit G was admitted.)

15 MR. RINDAL: Your Honor, that concludes my
16 questions for Mr. Clayton.

17 MR. ALBACK: I have a couple.

18 CROSS-EXAMINATION

19 BY MR. ALBACK:

20 Q. Mr. Clayton, how old are you?

21 A. Thirty-six.

22 Q. All right. You are 36 years old. You testified
23 that you have gone to school for 12 years?

24 A. On and off, yes.

25 Q. All right. And so I take it that part of that

1 time that you were going to school, you were going part-time?

2 A. Yes.

3 Q. All right. But your testimony also is that part of
4 that time you were going full-time?

5 A. Yes.

6 Q. And pretty much since '98, the bulk of that time
7 has been spent going to school full-time, right?

8 A. Yes.

9 Q. How many degrees do you have?

10 A. I am close to two other degrees, but I have the
11 one.

12 Q. Okay.

13 A. In history.

14 Q. And the one that you have is in history. What
15 other degrees are you close to having?

16 A. Business and marketing.

17 Q. Okay. Did you change majors from time to time?

18 A. Yes. Yes, I did.

19 Q. Are you in school now?

20 A. I am taking a sabbatical, as you would say.

21 Q. Okay.

22 A. I can't afford to go to school right now.

23 Q. Okay. So when did you last go to school?

24 A. In -- the last semester, which was from January
25 to May.

1 Q. And were those graduate hours?

2 A. Yes.

3 Q. In history?

4 A. No, actually in public relations.

5 Q. Okay. So you have almost a marketing, almost a
6 business, you have a history, and now you are taking graduate
7 courses in public relations?

8 A. Yes.

9 Q. Okay. And during that period of time that you have
10 been going to school, your father has been giving you,
11 according to your testimony, anywhere from ten to \$15,000 a
12 per year; is that correct?

13 A. Right. And when --

14 Q. Okay.

15 A. -- I wasn't working, yes.

16 Q. Okay. And also it is your testimony that during
17 that period of time your father gave you \$20,000 to buy a
18 house?

19 A. Yes.

20 Q. All right. And it's also your testimony that
21 during that period of time your father gave you \$18,000 --
22 \$19,000 -- over \$19,000 to buy a pickup?

23 MR. RINDAL: Objection, Your Honor. I don't
24 believe he testified that he gave him. I believe my client
25 testified that it was a loan.

1 MR. ALBACK: I'll restate it.

2 BY MR. ALBACK:

3 Q. During that period of time your father, who I
4 assume got tired of giving you money said, I'm going to
5 loan you \$19,500, right?

6 A. Yes.

7 Q. Okay. But he didn't make a loan to you, did he? I
8 mean, he didn't get a note from you, did he?

9 A. It was assumed that I would be paying it back.

10 Q. Okay. All right. Because you and Mary Beth,
11 according to your testimony, went down and bought yourself a
12 fancy-dancy pickup, right?

13 A. Yes.

14 Q. Okay. Have you brought forth any of your documents
15 from that purchase that reflects that Mary Beth participated
16 in that loan or in that purchase at all?

17 A. Yes. Well --

18 Q. You have?

19 A. Yes. Actually I have checks written to my father
20 stating it is a payment of a loan of the truck.

21 Q. That is not what I asked you, sir. Did you bring
22 any documents to this court that reflect that Mary Beth
23 purchased that vehicle from Fichtner's Chevrolet?

24 A. Documents on -- well, I don't remember them
25 providing any documents for myself.

1 Q. You didn't sign anything to evidence the purchase?

2 A. No, because there was no loan. So it was -- it was
3 a direct purchase through General Motors program.

4 Q. Did you title the vehicle?

5 A. Yes.

6 Q. You titled it in your name, didn't you?

7 A. Yes.

8 Q. Okay. Didn't title it in Mary Beth, did you?

9 A. No, I couldn't.

10 Q. Okay. Didn't get a note, she's not on the title,
11 you've brought forth no documents that she was part of the
12 deal, but yet your contention is, is that she owes your dad
13 half of \$17,400?

14 A. Yes, it is.

15 Q. All right. The same dad who has given you,
16 according to my quick math, \$80,000 over the last eight, ten
17 years, at least?

18 A. Probably, yes.

19 Q. Okay. The truth of the matter is that if the money
20 that you contend has to be paid back to your dad, you are
21 going to end up with it anyway?

22 A. No. The money that I am -- that I'm to be paying
23 back my dad, I'm going to get it anyway?

24 Q. Yeah.

25 A. No, certainly not.

1 Q. Your dad finally shut off the spigot?

2 A. Well, not completely, no.

3 Q. Okay.

4 A. But he has to buy a new car.

5 Q. Oh, all right. So he'll just get some of it
6 back -- or you'll just get some of it back?

7 A. No, I won't get any -- well, I won't get any of
8 this money back. This is --

9 Q. All right. In regard to the money that your father
10 has furnished to you over the years, first of all, you say
11 that the money that was realized after you sold the pickup,
12 right? You said you bought an Achieva?

13 A. Right.

14 Q. How much did you pay for the Achieva?

15 A. I think eleven, seven, 11,700.

16 Q. And you testified after that there was roughly
17 \$11,000 or so that remained, right?

18 A. Yes.

19 Q. And you testified that that money was used
20 basically for living expenses?

21 A. Yes.

22 Q. For the two of you?

23 A. Yes.

24 Q. All right. You also testified that in regard to
25 the ten to \$15,000 a year that your father gave to you, that

1 that money was used for living expenses?

2 A. Yes.

3 Q. All right.

4 MR. RINDAL: Your Honor, I'm not sure if there has
5 been a question in the last five minutes.

6 MR. ALBACK: I just asked him a question.

7 THE COURT: This is cross-examination.

8 MR. RINDAL: He's just restating.

9 BY MR. ALBACK:

10 Q. Did you testify that you used that money for living
11 expenses?

12 A. Yes, I did.

13 Q. All right. And did you testify that you used the
14 money that was left over from the sale of the pickup --

15 A. Yes.

16 Q. -- for living expenses?

17 A. Yes.

18 Q. Okay. And during that period of time you were
19 making a little bit of money, 2,000 or so a year, right?

20 A. Something like that, on average.

21 Q. Okay. And during that period of time Mary Beth was
22 making eighteen to \$22,000 a year; would you agree with that?

23 A. Yes.

24 Q. Okay. So as I add it all up, you and Mary Beth
25 were living on roughly \$50,000 a year?

- 1 A. Possibly.
 2 Q. And you still had to get money from your dad?
 3 A. Yes.
 4 Q. Okay. And isn't the truth of the matter that the
 5 money that came from the sale of the pickup and the money
 6 that came from your dad just gratis, was basically used to
 7 buy all the toys that ended up on your disclosure statement
 8 that we have agreed to that you have?
 9 A. No. What toys are you referring to?
 10 Q. Well, as I look at the disclosure statement that
 11 you have submitted to the Court for your division, there is
 12 at least five firearms that have been purchased during the
 13 course of the marriage that are on your side of the ledger
 14 that Mary Beth has agreed to.
 15 A. Actually I believe my original proposal was her to
 16 get -- or she has three firearms, actually, of those five.
 17 Q. Mr. -- I'm not asking you, I'm asking you if there
 18 were five firearms that were purchased during the course of
 19 the marriage that you're ending up with?
 20 A. I believe so.
 21 Q. Okay. And you end up with the Achieva?
 22 A. What is left of it, yes.
 23 Q. Ah, okay. And let's speak about that.
 24 A. Okay.
 25 Q. You say in the documents that you provided the

- 1 Judge today that that Achieva is worth \$1500?
 2 A. Yes.
 3 Q. Is that right? But the documents that you have
 4 furnished for your initial disclosure, or declaration of
 5 disclosure had a value of \$3,000?
 6 A. Yes.
 7 Q. And isn't it the truth of the matter that since the
 8 day you bought the Achieva, it has been your vehicle?
 9 A. No.
 10 Q. Is Mary Beth's name on that title?
 11 A. No.
 12 Q. Has it ever been?
 13 A. No.
 14 Q. Okay. Would you agree that the values that
 15 are placed on the property that is included on the
 16 declaration of -- I'm sorry, the agreed division of personal
 17 property are values that you established?
 18 A. Now, which -- which -- which -- are you talking
 19 about the one I submitted?
 20 Q. Yes. The truth of the matter, isn't it -- I'll
 21 help you.
 22 A. Okay.
 23 Q. Isn't it the truth of the matter that you furnished
 24 a listing of all of your assets to Mr. Rindal and had values
 25 assigned to those documents?

- 1 A. Yes.
 2 Q. I mean to those assets?
 3 A. Yes.
 4 Q. All right. And those assets and their values are
 5 what is before the Court now as the agreed upon division?
 6 A. Yes.
 7 Q. Okay. And so if the assets that are on your side
 8 of that ledger totals \$10,616, and those that are on Mary
 9 Beth's total \$2,200, would you agree that that is a result
 10 of calculations or of values that you have placed on those?
 11 A. Certainly I'm not a professional appraiser, but,
 12 yes, I guess I would -- I would -- you know, from my
 13 abilities, which aren't great, yes.
 14 Q. Well, based upon that, would you agree that the
 15 value of the assets that you're retaining of a personal
 16 property nature are five times greater than the value of what
 17 Mary Beth is getting?
 18 A. Well, I certainly think we should also say that a
 19 lot of those were premarital.
 20 Q. The premarital aren't included in the calculations,
 21 sir.
 22 A. The firearms? There are certainly firearms listed
 23 on there that are premarital.
 24 MR. ALBACK: What is the hearing number?
 25 MR. RINDAL: A I think.

- 1 MR. ALBACK: Excuse me?
 2 MR. RINDAL: I believe it's A.
 3 MR. ALBACK: May I approach, Your Honor?
 4 THE COURT: You may.
 5 MR. ALBACK: All right.
 6 BY MR. ALBACK:
 7 Q. I'm showing what has been marked as Exhibit A.
 8 Those items that are listed as premarital --
 9 A. Yes.
 10 Q. -- have no value, do they, in --
 11 A. No.
 12 Q. All right.
 13 A. Sorry.
 14 Q. Okay.
 15 A. So many documents.
 16 Q. Okay. So little time. The ten to 15,000 that your
 17 dad gave you per year, did he do a gift statement for those
 18 for tax purposes too?
 19 A. No.
 20 Q. Do you know why not?
 21 A. I have no idea. I really don't.
 22 Q. Okay. All right. I just have a few more questions
 23 to ask you. I want to talk to you about the parenting plan
 24 just a little bit. All right?
 25 I believe your position originally with what has

- 1 been filed, is that you want every other weekend, right? I
 2 mean, I'm sorry, every other week with your daughter?
 3 A. Yes.
 4 Q. But as I understand your testimony, are you backing
 5 off that position?
 6 A. Well, I am trying to do what is best for my
 7 daughter. And I think -- you know, I'm trying to follow an
 8 expert's advice. The expert is contending that if I am able
 9 to go to the therapist with my daughter, then I should be
 10 granted more time with my daughter. What I'm trying to be is
 11 realistic.
 12 Q. Okay.
 13 A. I mean, at this period of time, I most likely don't
 14 have a chance --
 15 Q. So you have backed off?
 16 A. Assume -- yes.
 17 Q. Okay. And as I understand that the reason that you
 18 want the additional time with your daughter that Mr. Rindal
 19 has been batting around all day about your days off, right,
 20 is because you want to spend time with your daughter?
 21 A. Yes.
 22 Q. And her time is better spent with you than with
 23 Alice the baby-sitter; is that right?
 24 A. Most definitely.
 25 Q. Okay. I just have a question that I can't resolve;

- 1 and that is, what about the three and a half years when your
 2 daughter was going to the baby-sitter everyday when you were
 3 home, when you weren't in school? You never went to get here
 4 then? You never insisted on having daycare with her in your
 5 presence then, did you?
 6 A. Well, actually I think we discussed this in the
 7 first trial. The first summer I had to spend out in the
 8 front yard doing landscaping. Also I had various hours with
 9 my work schedule and school schedules.
 10 Q. Okay.
 11 A. And we're supposed to have consistency in my
 12 daughter's life.
 13 Q. Okay. And so I take it that then it was more
 14 important that the consistency include Alice, right?
 15 A. At the time, I don't think -- between the ages of
 16 three and six are the most developmental important years of a
 17 child's life. You know, without her -- I am now, between the
 18 ages of three and six, able to be there for her.
 19 Q. You are going to school now, are you, part-time?
 20 A. As I stated before, I can't afford to go to school
 21 right now.
 22 Q. But as soon as you can afford it, are you planning
 23 to?
 24 A. It would most likely be a distance program where I
 25 would stay home.

- 1 Q. Okay. And so that would be some quality time with
 2 you and Grace while you were doing your distance schooling on
 3 the computer?
 4 A. Well, actually I would only -- I would only take it
 5 as many classes that I can handle so my daughter is coming
 6 first. I mean, my work knows that, I have told them that my
 7 daughter is the most important thing in my life.
 8 Q. Okay. Fair enough. Fair enough. I just have like
 9 two more questions. Mr. Rindal asked you about times when
 10 Mary Beth has withheld visitation from you.
 11 A. Yes.
 12 Q. Right? And the only example that you could give of
 13 that was --
 14 A. Actually he told me the most recent example is what
 15 he asked me.
 16 Q. And so your example was, is the day that -- when
 17 your --
 18 A. That my daughter --
 19 Q. If you might -- I will ask the questions and then
 20 when I'm done, you can answer. All right? Okay?
 21 A. (No response.)
 22 Q. The example you gave was one occasion when, under
 23 your own testimony, you picked your daughter up and she had,
 24 in your words, a high fever.
 25 A. Yes.

- 1 Q. And your visitation, it was in March?
 2 A. I am trying -- yes, it was in March.
 3 Q. March would be wintertime, I'm guessing? Probably
 4 not a warm day.
 5 A. Probably not.
 6 Q. Okay. And are you, seriously, complaining that
 7 Mary Beth didn't bring your daughter out in the cold with a
 8 high fever the next day so that you could spend your four
 9 hours with her?
 10 A. Actually the next day she didn't have a fever. It
 11 was the night before that she was ill, and I was able to take
 12 care of her that next day.
 13 Q. Okay.
 14 MR. ALBACK: I have nothing further, Judge.
 15 REDIRECT EXAMINATION
 16 BY MR. RINDAL:
 17 Q. Steve, Mr. Alback was, I guess, trying to show that
 18 you, out of all these complaints you had, you could only
 19 think of two times. If we had an hour to -- how many times
 20 do you think that she has withheld or restricted your
 21 visitation with Grace since last September?
 22 A. Actually I have a calendar of such events.
 23 Q. Can you estimate how many times? Don't go into the
 24 details, please.
 25 A. I would say eight times.

1 Q. Okay. And, in fact, hasn't there been times when
2 you were able to take care of her, and was there an incident
3 where --

4 MR. ALBACK: I object as to leading, Your Honor.

5 MR. RINDAL: Sure.

6 BY MR. RINDAL:

7 Q. Is there an incident that you'd like to tell
8 recently about, she was supposed to take her to work?

9 A. Yes. Well, the incident began with my -- my
10 daughter was again sick, I think it --

11 THE COURT: I think this is beyond the scope of the
12 cross-examination.

13 MR. RINDAL: Your Honor, he was talking about the
14 illness and this is --

15 THE COURT: You are going beyond the scope of the
16 cross-examination and I'm going to prohibit any further
17 questions.

18 MR. RINDAL: Well, since you are prohibiting any
19 further questions, I have nothing further, Your Honor.

20 THE COURT: On this subject.

21 MR. ALBACK: I have nothing further, Judge.

22 THE COURT: You may step down. Do you have another
23 witness?

24 MR. RINDAL: I do, Your Honor. I would like to
25 call Mr. Art Clayton.

1 ARTHUR W. CLAYTON,
2 called as a witness, and having been first duly sworn, was
3 examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. RINDAL:

6 Q. Mr. Clayton, would you please state your full name
7 for the record?

8 A. Arthur W. Clayton.

9 Q. And are you the father of Steve Clayton?

10 A. Yes, I am.

11 Q. And what is your address?

12 A. 684 Catalina Road, Fullerton, California, 92825.

13 Q. Okay. Okay. That is fine. I want to ask you a
14 few short questions. One regarding --

15 MR. RINDAL: May I approach the witness, Your
16 Honor?

17 THE COURT: You may.

18 MR. RINDAL: I handed him exhibit Exhibit F, that
19 one there. Toby, F.

20 MR. ALBACK: Gotch you, thank you.

21 BY MR. RINDAL:

22 Q. Mr. Clayton, I handed you a document marked
23 Respondent's Exhibit F. Do you recognize that document?

24 A. Yes, sir, I do.

25 Q. Now, there is some blackouts, I have -- I, myself

1 have blacked out certain numbers that show account balances.

2 You have the original, or you provided a copy of this without
3 the blackouts to me; is that correct?

4 A. Yes, sir.

5 Q. Is this the same document that you handed me
6 without the blackouts?

7 A. Yes, it is.

8 Q. Okay. I want to direct your attention to, at the
9 bottom, where it says, Check to Fichtner Chevrolet,
10 \$19,543.36?

11 A. Yes.

12 Q. Was that a loan to Mary Beth and Steve Clayton?

13 A. Yes, it was.

14 Q. And why did you give them that loan?

15 A. Well, I was an employee of General Motors and I get
16 a discount on cars. When my son decided -- and Mary Beth
17 decided that they wanted a new car because her truck was
18 getting rather old, they decided to purchase a new car, and
19 used my discount, as my son he could do that.

20 They went and applied at the this dealership and
21 when they went to purchase the car, the interest would have
22 been 18 percent, with a cosigner 25 percent. So I told them
23 that I would loan them the money through my bank, because I
24 could get a mortgage -- well, I had an outstanding line of
25 credit with my credit union. So I just had them write a

1 check and -- because I felt that was an outrageous price to
2 add to the cost of the vehicle they were buying.

3 Q. Okay.

4 A. With the premise that they would be paying me back.

5 Q. Okay. And, in fact, have they made payments back
6 to you?

7 A. They were making payments on a regular basis for a
8 number of months until the job situations changed, their
9 financial costs changed, and then it became difficult for
10 them to do so. And, therefore, in my typical permissive
11 parent supporting fuss style, I let it slide.

12 Q. Okay.

13 A. But I never forgave it.

14 Q. Sure. Now, is that an accurate number,
15 \$19,543 --

16 A. Yes, it is.

17 Q. Okay. You have to wait for me to finish the
18 question. I know --

19 A. Okay.

20 Q. -- a lot of people get nervous and answer before
21 the question is done.

22 MR. RINDAL: Your Honor, I'd move for admission of
23 Respondent's Exhibit F.

24 MR. ALBACK: I have no objection, Your Honor.

25 THE COURT: F is admitted.

(Respondent's Exhibit F was admitted.)

MR. RINDAL: May I approach the witness, Your Honor?

THE COURT: You may.

MR. RINDAL: Here is a bench copy.

BY MR. RINDAL:

Q. Mr. Clayton, I have handed you a document marked Respondent's Exhibit H. Do you recognize this document?

A. Yes, I do.

Q. Is this in fact the information, the spread sheet that you have provided to my office to make copies for the Court today?

A. Yes, it is.

Q. What do some of these numbers represent?

A. These reflect the checks that I issued to Steven and Mary Beth to help support them while Steve was going to school.

Q. Okay. Do you recall when they were married?

A. I want to say December 30th, '98.

Q. Okay. I believe it was 1995.

A. '95, excuse me.

Q. But this document starts at 1996. Do you --

A. Well, they were married on December 30, '95; is that correct?

Q. I don't personally remember the date. Yes, I guess

that is correct.

A. Yes.

Q. So December 30th of 1995 is their marriage, and within -- well, within two weeks I see you started giving them gifts of \$1,000?

A. Yes, sir.

Q. Why did you keep track of this money that you provided to them?

A. Well, I have three children.

Q. Mm-hmm.

A. And my intention is to try to treat my three children equitably. They require different types of financial support, or I have been in the position to provide them different types of financial support --

MR. ALBACK: Your Honor, I am going to object to this testimony, and also object to this document for the following reasons: The only allegation that is before this Court is that somehow my client might owe Mr. Clayton half of the amount of the car -- the pickup loan. And I take it they're alleging that she owes part of the \$20,000 down payment.

All of this other stuff is extraneous to this witness's testimony, and it is not -- it is a waste of time at this point.

THE COURT: I'm going to overrule the objection.

I am -- as I warned everybody before, I'm well aware of the Statute of Frauds in this matter.

MR. ALBACK: Okay, Your Honor.

BY MR. RINDAL:

Q. Mr. Clayton, as we were talking about, it's apparently that you have been very generous to your son and daughter-in-law; is that fair?

A. Yes.

Q. Okay. This money that you gave to Steve and to Mary Beth, all the ones in these first columns, unless otherwise designated, those are just gifts that you are trying to be a helpful father and father-in-law?

A. That's correct.

Q. Okay. There are a couple -- a couple specific items, though, I do want to save time to direct your attention to. On the first page it says on 10-22-97, where it says, Credit union loan to Steve and Mary Beth for their pickup.

Did you ever tell Steve or Mary Beth that that was a gift to them?

A. No, sir.

Q. Okay. And I believe you earlier testified that they have made payments to you?

A. Yes.

Q. Is it from your recollection that Mary Beth has

actually made payments also to you, not just Steve?

A. I believe she wrote the checks.

Q. Okay. And has she ever told you to this date that she didn't owe you the money or that there was no loan?

A. No.

Q. Did she acknowledge the loan to you?

A. Yes.

Q. Okay. You also gave a down payment on 5-14-98, that letter has been admitted, I don't recall the exhibit.

But it was the gift letter that you provided to me, that you gave to Steve a \$20,000 gift in order for Mary Beth and him to purchase a house?

A. Yes.

Q. Do you recall that?

A. Yes.

Q. And that gift was given to Steve; is that correct?

A. Yes, it says to Steve.

Q. Okay. Also I see all within the next couple of days, 5-15 and 5-16, it shows that you had some -- you gave them additional fundings, it looks like \$5,000 for escrow costs?

A. Yeah, I --

Q. Go ahead.

A. If I may, I had discussions with the lender, and determined that we could lower their payment by buying a

1 point, so to speak.

2 Q. Sure.

3 A. And in addition to that, there was, I think it was
4 \$2,000 more, if I recall, to cover the escrow costs above the
5 \$20,000 down payment. I may have those two numbers in
6 reverse.

7 Q. Okay.

8 A. But one was for increased escrow costs, and the
9 other was to reduce the monthly payments that they'd have to
10 pay by buying a point.

11 Q. Okay. And so actually for them, for Mary Beth and
12 Steve, to buy that house, you provided them a total of
13 \$25,000; is that correct?

14 A. Yes, sir.

15 Q. Do you understand that Steve has requested that the
16 \$20,000 be credited to him, but he is allowing to let \$5,000
17 go, split between Mary Beth and himself?

18 A. No, I didn't know that. I knew that the \$20,000,
19 was a gift, and I don't know what Steven agreed to.

20 Q. Okay. I'd like to go on the back page, I believe
21 it is page 4. Okay. Like I said, the date of the loan for
22 the pickup was 10-22-97, it shows eight payments.

23 A. Yes.

24 Q. Is it your testimony or your recollection that Mary
25 Beth and Steve had paid you back eight payments of \$300 a

1 payment?

2 A. Yes.

3 Q. Okay. And I believe you earlier said that Mary
4 Beth had agreed to pay it and she was the one that actually
5 paid the loan to you?

6 A. She was -- she was writing the checks. I think she
7 took care of the finances, as one person typically does, she
8 was the check writer in the family.

9 Q. Okay. Do you have any intention of forgiving the
10 loan, the \$17,000 loan -- the remaining balance to Mary Beth
11 and to Steve?

12 A. No.

13 Q. Okay. How long has -- excuse me. Did you get to
14 see your granddaughter yesterday?

15 A. For about an hour and a half.

16 Q. Were you with Steve when Steve requested extra time
17 to spend with his daughter?

18 A. We came in on Saturday, I don't if I've gone back
19 too far, and the timing of yesterday -- we had her -- no, he
20 had her the day before, which was I guess the day he
21 typically has her. And he took her back that night and then
22 he had to go -- he dropped her off, I think about eight
23 o'clock, I can't recall precisely. Then he had to go back
24 and get her at 8:30 in the morning to take her to the therapy
25 meeting that he had and Grace had scheduled.

1 Q. Okay. So you have been here since Saturday?

2 A. Yes, sir.

3 Q. How many hours have you seen Grace?

4 A. Well, we saw her an hour and a half yesterday. We
5 saw her most of the day that he had her, which was -- the
6 time was Monday I guess. And he had her when we met at the
7 airport.

8 Q. So you have seen -- you have seen your son with
9 Grace recently?

10 A. Oh, yes.

11 Q. Did anything -- did anything stand out -- were
12 there any concerns that you had that Steve wasn't parenting
13 properly?

14 A. Absolutely not. I am very proud of the way he
15 takes care of his daughter. And she responds very well to
16 him. And I think he is just an absolutely super father.

17 Q. Okay.

18 MR. RINDAL: I have nothing further of this
19 witness, Your Honor. I'd move for -- excuse me, I'd move for
20 admission of Respondent's Exhibit H.

21 MR. ALBACK: I have no objection.

22 THE COURT: H is admitted.

23 (Respondent's Exhibit H was admitted.)

24 MR. RINDAL: Thank you.

25 ///

CROSS-EXAMINATION

1 BY MR. ALBACK:

2 Q. Mr. Clayton, I just have a few questions for you.

3 A. Yes, sir.

4 Q. As I look at Exhibit H, it appears that at such
5 time -- you were aware, were you not, that the pickup was
6 sold ultimately?

7 A. Oh, yes.

8 Q. Okay. And do you know when it was sold?

9 A. I don't recall the date.

10 Q. All right.

11 A. I know they had the car for a shorter period of
12 time than they had intended, and they decided somewhere along
13 the line to trade down so they could accumulate some cash in
14 order to do some things that they felt they needed to do.

15 Q. Okay. And did it occur to you at that point in
16 time to seek repayment of this loan that you intended?

17 A. No. That loan wasn't altered by that. The fact of
18 whatever they did with that car and sold it, did not alter
19 the loan that I gave them or that money.

20 Q. That is not what I asked you. Did it occur to
21 you -- I mean, you were aware that they were selling the car?

22 A. They didn't ask --

23 Q. Or pickup?

24 A. They did not -- no, I was not aware.

25

1 Q. Oh, okay. Had you been aware of it, and had you
2 been aware that they were going to receive \$21,000 for it,
3 would you have asked for your money back then?

4 A. I don't know. I don't recall the circumstances as
5 to what their needs were at the time and why they made a
6 decision to sell that car.

7 Q. Okay. There is no promissory note?

8 A. It was a father/son -- it was an on-the-spur phone
9 call when he was sitting in the dealer's office telling --

10 Q. Was Mary Beth on that phone call too?

11 A. No.

12 Q. Okay. I'll represent to you that they sold the
13 vehicle in 1999, I believe, the pickup. And I noticed from
14 your -- your Exhibit H that you prepared, that throughout,
15 oh, starting all of '99, through 2000, 2001, 2002, you
16 regularly sent money to your son, apparently in amounts
17 anywhere from \$300 a month to \$1,000 a month regularly, some
18 as high as \$1500, \$1275, \$1500; would you agree?

19 A. Yes.

20 Q. Okay. Did it ever occur to you that out of that
21 money, which I didn't take it as a gift, right, to these
22 folks?

23 A. Yes.

24 Q. Did it ever occur to you to say, Well, guys, you
25 ought to pay my \$300 a month back?

1 A. No.

2 Q. It didn't?

3 A. Do you want to know why?

4 Q. No, I don't. But it never occurred to you, did it?

5 A. No.

6 Q. I will guess why, though. My guess is because it
7 would be taking out of your left pocket and putting it into
8 your right pocket, isn't that right?

9 A. No.

10 Q. Or into Steve's right pocket?

11 A. No.

12 Q. Isn't that right?

13 A. No.

14 MR. ALBACK: I have nothing further of this
15 witness, Judge.

16 THE COURT: Mr. Rindal.

17 REDIRECT EXAMINATION

18 BY MR. RINDAL:

19 Q. Mr. Clayton, why didn't you demand the money or
20 reduce your amount of gifting after you learned that they had
21 sold the pickup?

22 A. Why did I reduce the amount of gifting?

23 Q. Why didn't you.

24 A. Why didn't I? I don't know if I could tell you
25 why. I don't know if I honestly know. One of the main

1 reasons is that being so far away, it's hard to recall all
2 the circumstances and all the dates.

3 My son was working on a job where he could
4 afford -- he and Mary Beth I believe were making comparable
5 incomes in that time, when he was working for Freuhauf. That
6 job disappeared. He didn't finish his education at the
7 university, he went off to a summer vacation -- a work,
8 excuse me, at Yellowstone met, Mary Beth and they
9 subsequently got married. And he did not finish his college
10 degree, which my wife and I had invested some significant
11 amount of money in to educate our son.

12 When he lost that job, the decision was made, I
13 think by Mary Beth and Steve, for him to go back to school.
14 In order for him to go back to school, it was going to be
15 difficult for them to do so. And we helped them financially
16 with tuition and with books and with some costs of living.

17 And if he told me he was short, or they needed some
18 money for a certain item, I would often respond, because I
19 could. And I kept diligent notes to that extent, because
20 when my time comes, I want to make sure that my daughter and
21 his brother, receive ample share of the estate.

22 And because of the circumstances of his education
23 and his marriage and his expenses, he's a little a head of
24 the game right now.

25 MR. RINDAL: I have nothing further, Your Honor.

1 MR. ALBACK: Nothing further, Judge. Thank you.

2 THE COURT: I have one question

3 THE WITNESS: Yes, ma'am.

4 THE COURT: When are you due to leave Billings?

5 THE WITNESS: Tomorrow morning.

6 THE COURT: Thank you.

7 MR. RINDAL: Your Honor, the Respondent rests.

8 THE COURT: Very well. The Court, of course, will
9 take this matter under advisement, but I am going to order
10 that there be an immediate alteration to the visitation
11 schedule so that Grace can spend the evening with her
12 grandparents.

13 MR. ALBACK: Very well, Your Honor.

14 MR. RINDAL: Thank you, Your Honor.

15 THE COURT: And with that, Court is in recess.
16 (Proceedings concluded.)

17 --00000--

CERTIFICATE OF REPORTER

I, STEPHANIE MICHELS, Registered Professional Reporter,
Registered Merit Reporter, and a Notary Public of the State
of Montana.

Do hereby certify that I reported in machine shorthand
the foregoing proceedings at the time, place and with the
appearances of counsel hereinbefore noted.

I further certify that the transcript transcribed from
my original shorthand notes by means of computer-assisted
transcription, is a full, true, and correct transcript of the
oral testimony adduced therein, to the best of my ability.

I further certify that I am not of counsel for, nor in
any way related to, any of the parties in this matter, nor am
I in any way interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed my Notarial Seal this 20th day of September, 2003.

(Seal) STEPHANIE MICHELS
Registered Professional Reporter,
Registered Merit Reporter,
and Notary Public of the State of
Montana. Residing at Billings,
Montana. My commission expires:
September 26, 2006.

GIFT LETTER

Date: April 30, 1998

TO WHOM IT MAY CONCERN:

We (I) ARTHUR AND NANCY CLAYTON are (am) giving our (my)
SON, STEPHEN CLAYTON the amount of
(relationship) (name of recipient)

\$ 20,000.00 as a gift, for which there is no obligation to repay in the form of cash or services at any date.

Arthur W Clayton 4/30/98
Donor Signature Date
Nancy E Clayton 4/30/98
Donor Signature Date

Donor Address

Donor Phone Number

Borrower Signature Date

Borrower Signature Date

Gifts from sources other than relatives, borrower's employer or labor union, a charitable organization, a governmental agency or public entity that has a program to provide homeownership assistance to low- and moderate-income families or first-time homebuyers, or a close friend with a clearly defined interest in the borrower, require a reduction to the sales price.

There must be a paper trail established. Provide the following:

 copy of the donor's withdrawal slip or cancelled check
OR

 copy of cashier's check with donor's name identified

AND

 borrower's deposit slip or bank statement showing
the deposit

Evidence of wire transfer from the donor's acct. to the borrower's acct. is also acceptable.

Ray Exh E

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Lee Rindal
RINDAL LAW FIRM
926 Main Street
Billings, Montana 59105

DATED this 5th day of September, 2002.

By: Susan M. Martinez

COPY

Toby Alback
ALBACK & BOSCHERT, P.C.
 208 North 29th Street, Suite 227
 Billings, MT 59101
 Telephone: (406) 252-4221

Attorney for Petitioner/Wife

**MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,
 YELLOWSTONE COUNTY**

IN RE THE MARRIAGE OF

MARY BETH CLAYTON,

Petitioner,

v.

STEPHEN LLOYD CLAYTON,

Respondent.

CAUSE NO.: DR02-0705

JUDGE: DIANE G. BARZ

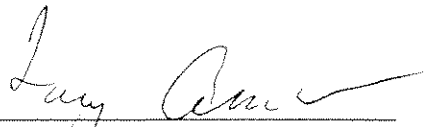
**PETITIONER'S RESPONSE TO RESPONDENT'S MOTION FOR
 SHOW CAUSE HEARING, PETITIONER'S MOTION TO ADOPT
 PRELIMINARY AMENDED PARENTING PLAN AND FOR
 CHILD SUPPORT ORDER**

COMES NOW, Petitioner, by and through her counsel of record and hereby enters her response and objection to Respondent's Motion For Show Cause Hearing in which Respondent asks the Court to adopt Respondent's Proposed Interim Parenting Plan as the interim parenting plan during the pendency of this action.

In addition, Petitioner moves this Court for its Order adopting Petitioner's Preliminary Amended Parenting Plan filed herewith as the interim parenting plan during the pendency of this action and, further, moves the Court for its Order establishing temporary child support pursuant to Petitioner's child support calculations filed herewith.

1 This Response and Motion is supported by the Affidavit of Petitioner and Petitioner's
2 Brief filed herewith.

3 DATED this 4th day of September, 2002.

4 
5 **TOBY ALBACK**
6 **Attorney for Petitioner**

7 **CERTIFICATE OF MAILING**

8 I hereby certify that a true and correct copy of the foregoing was mailed, postage pre-
9 paid, to the following opposing counsel of record at the address listed below:

10 Lee Rindal
11 RINDAL LAW FIRM
12 926 Main Street
13 Billings, Montana 59105

14 DATED this 4th day of September, 2002.

15 By: 
16
17
18
19
20
21
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RECEIVED SEP 11 2002

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

IN RE THE MARRIAGE OF:

MARY BETH CLAYTON,

Petitioner,

and

STEPHEN LLOYD CLAYTON,

Respondent.

Cause No.: DR-02-0705

Judge: Diane G. Barz

ORDER

**Re: INTERIM PARENTING PLAN
AND SETTING HEARING**

Both parties having responded to the Court's Order of August 23, 2002, through their attorneys, **THE COURT ORDERS AS FOLLOWS:**

1. **The Court will adopt** the Petitioner's Amended Proposed Parenting Plan effective immediately, until the hearing.

2. A **hearing** on the Interim Parenting Plan is **SET** for September 24, 2002, at 9:00 o'clock A.M., Courtroom #518, Yellowstone County Courthouse, Billings, Montana. Each party shall have thirty (3) minutes, including cross-examination. No other witnesses except the parties can testify. The parties need to have their Child Support Calculations completed.

DATED this 10 day of September, 2002.

cc: Lee Rindal, Esq.
Toby Alback, Esq.

HON. DIANE G. BARZ, DISTRICT JUDGE

CERTIFICATE OF SERVICE

This is to certify that the foregoing was duly served by mail or by hand upon the parties or their attorneys of record at their last known address on this 10 day of September, 2002.

By [Signature]
Court Asst. to HON. DIANE G. BARZ

**MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,
YELLOWSTONE COUNTY**

IN RE THE MARRIAGE OF

MARY BETH CLAYTON,

Petitioner,

v.

STEPHEN LLOYD CLAYTON,

Respondent.

CAUSE NO.: DR02-0705

JUDGE: DIANE G. BARZ

ORDER ADOPTING TEMPORARY PARENTING PLAN

THIS MATTER came on for Show Cause Hearing before the Court on the 29th day of September 2002. Petitioner was present in person along with Toby Alback, her counsel of record. Respondent appeared in person along with his attorney, Lee Rindal. Testimony of Petitioner and Respondent was presented to the Court and, after consideration of such testimony and evidence presented at hearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. The Court hereby orders that the Petitioner's Proposed Amended Parenting Plan filed herein is hereby adopted as the Interim Parenting Plan as to the care, custody and control

1 of the parties' minor child during the pendency of this action, provided, however, that
2 Petitioner's Amended Proposed Parenting Time shall be amended to allow Respondent/Father
3 the following visitation schedule with the minor child:

4 Father shall be entitled to two (2) weeknight visitations with the minor
5 child per week, on days of his choosing during the period from 4:00 p.m.
6 through 8:00 p.m. In addition, Father shall be entitled to visitation/custody of
said minor child every other weekend from Friday at 4:00 p.m. through Sunday
evening at 6:00 p.m.

7 IT IS SO ORDERED.

8 DATED this 15 day of October, 2002.

9
10 DIANE G. BARZ
11 **DIANE G. BARZ**
District Court Judge

12 cc: Lee Rindal, Esq.
13 Toby Alback, Esq.

14 CERTIFICATE OF SERVICE

15 This is to certify that the foregoing
16 was duly served by mail upon the
parties or their attorneys of record
at their last known address this
17 15 day of Oct.,
20 02.

Honorable Diane G. Barz

By Mardelle J. Considine

1 MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
2 YELLOWSTONE COUNTY

3 IN RE THE MARRIAGE OF:
4 MARY BETH CLAYTON,

)
) No. DR 02-0705
)
)

5 Petitioner/Respondent,

6 and

7 STEPHEN LLOYD CLAYTON,

8 Respondent/Appellant.
9

COPY

10
11 TRANSCRIPT OF PROCEEDINGS

12 Courtroom - Dept. No. 1
13 Yellowstone County Courthouse
14 Billings, Montana
June 18, 2003
1:30 p.m.

15 HONORABLE DIANE G. BARZ, PRESIDING JUDGE

16 APPEARANCES

17 For the Petitioner:

ALBACK & BOSCHERT
by TONY ALBACK
208 North 29th Street, Ste. 227
Billings, MT 59101

19 For the Respondent:

RINDAL LAW OFFICE
by LEE RINDAL
926 Main Street, Ste. 16
Billings, MT 59105

22
23 CONDENSED

24
25 TRANSCRIPT

STEPHANIE MICHELS, RPR, RMR
OFFICIAL COURT REPORTER
P.O. BOX 20577
BILLINGS, MT 59101
Courthouse 406-256-2722
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4

1 MARY BETH CLAYTON,

2 called as a witness and having been first duly sworn, was

3 examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. ALBACK:

6 Q. All right. Would you state your name, please?

7 A. Mary Elizabeth Clayton.

8 Q. Ms. Clayton, where do you reside?

9 A. 617 North 25th Street, Apartment 2, in Billings.

10 Q. And you are the petitioner in this action; is that

11 right?

12 A. Yes.

13 Q. Okay. You read the petition that I filed on your

14 behalf in this matter prior to my filing it, right?

15 A. Yes.

16 Q. And were the matters contained in that petition

17 true and accurate?

18 A. Yes.

19 Q. Okay. You resided in the State of Montana for 90

20 days immediately prior to the filing of the petition; is that

21 right?

22 A. Yes.

23 Q. Okay. Is the marriage -- in your opinion, is your

24 marriage to Mr. Clayton irretrievably broken?

25 A. Yes.

3

1 PROCEEDINGS

2 June 18, 2003, 1:30 p.m.

3 THE COURT: Good afternoon. Court is in session.

4 You may be seated.

5 This is the time the Court has set aside for

6 hearing in Cause No. DR 02-075. The record will show that

7 both the petitioner and the respondent are present in the

8 courtroom with their respective attorneys.

9 Mr. Alback, you are the petitioner's attorney and

10 you may proceed.

11 MR. ALBACK: Thank you, Your Honor. Your Honor,

12 the petition calls Mary Beth Clayton to the stand.

13 (Witness was sworn.)

14 MR. ALBACK: Your Honor, before we begin, I'd like

15 to represent to the Court that the parties have agreed to a

16 distribution of the personal assets, personal property items.

17 And in that regard, the assets -- those assets will

18 be distributed between the parties on -- as per the proposed

19 asset distribution that Mr. Rindal has presented to the

20 Court.

21 And so I just wanted to let you know that my client

22 is in agreement with that, so we won't be addressing any of

23 those issues at this hearing.

24 THE COURT: Thank you.

25 ///

5

1 Q. And is there any prospect of reconciliation?

2 A. No.

3 Q. You and Mr. Clayton have you been separated since

4 June 3rd, 2003; isn't that right?

5 A. Of 2002.

6 Q. Or, I'm sorry, 2002.

7 Okay. And the two of you have one child?

8 A. Yes.

9 Q. And who is that?

10 A. Grace Marie.

11 Q. How old is Grace?

12 A. She is four.

13 Q. Okay. You are not now pregnant; is that right?

14 A. No.

15 Q. Okay. Is it your desire that after hearing that

16 your name be changed to your former maiden name?

17 A. No.

18 Q. All right. And is it your desire that after the

19 hearing of this matter that the Court enter a decree of

20 dissolution of your marriage to Mr. Clayton?

21 A. Yes.

22 Q. I'd like to talk to you now about the parenting

23 plan issues before the Court. You recall, do you not, that

24 back in September of 2002 this matter was before the Court in

25 regard to an interim parenting plan matter?

1 A. Yes.
 2 Q. And you recall that after that hearing that
 3 Judge Barz entered an order that established an interim
 4 parenting plan?
 5 A. Yes.
 6 Q. And that interim parenting plan provided that
 7 Mr. Clayton would have every other weekend with your daughter
 8 and two evenings per week; is that correct?
 9 A. Yes.
 10 Q. Okay. And has that parenting plan been followed
 11 since the time of the entry of it by the Court?
 12 A. Yes.
 13 Q. And has that parenting plan worked sufficiently in
 14 your opinion since that time?
 15 A. Yes.
 16 Q. You also recall -- I assume you recall that
 17 Judge Barz also strongly recommended in court that you and
 18 Mr. Clayton attend parenting classes. Have you done so?
 19 A. Yes.
 20 Q. Where did you attend those classes?
 21 A. Through Yellowstone Rehabilitation at MSU.
 22 Q. And when did that occur?
 23 A. In November or December.
 24 Q. Okay. And could you tell the Court briefly what
 25 type of things were addressed by the transparenting classes?

1 A. How to minimize the effects of a conflict, such as
 2 divorce on a child, and how to deal with the issues of
 3 divorce with the other parent without it negatively affecting
 4 the child.
 5 Q. Did you learn some things through those classes --
 6 A. I did.
 7 Q. -- that have been of assistance to you in dealing
 8 with Grace?
 9 A. Yes.
 10 Q. And how about in assistance to you in dealing with
 11 Mr. Clayton?
 12 A. I believe so.
 13 Q. Okay. Have you tried to utilize any of those
 14 things in your dealings with Mr. Clayton?
 15 A. I have.
 16 Q. For example?
 17 A. I have done correspondence via e-mail instead of
 18 trying to discuss things in front of Grace that could be
 19 disruptive to her mental well-being.
 20 Q. How has Mr. Clayton responded to those type of
 21 entrees from you?
 22 A. He was rather unhappy about it, he seemed to think
 23 that I wasn't willing to talk to him in person. So from then
 24 on he pretty well shut the door in my face or walk away
 25 during drop off times.

1 Q. To your knowledge, has Mr. Clayton taken the
 2 transparenting classes?
 3 A. Not that I'm aware of.
 4 Q. Have you sought any other parenting or counseling
 5 assistance in regard to your daughter and this divorce
 6 proceeding?
 7 A. Based on the recommendations of the people at
 8 Yellowstone Rehabilitation, I sought counseling with Mary
 9 Macki with Custody Consultants for Grace as well as myself.
 10 Q. Okay. And how long have you been seeing Mary
 11 Macki?
 12 A. We have gone for nine or ten sessions. It started
 13 back in February, I believe.
 14 Q. And have those sessions been with you and Grace
 15 jointly with Mary Macki, or Grace alone or you alone or --
 16 A. It has been with both of us with her.
 17 Q. Do you perceive that those sessions have been a
 18 benefit to your daughter?
 19 A. Yes, they have been.
 20 Q. How so?
 21 A. It has helped her learn how to verbalize her
 22 feelings and what has been going on in her life, and she has
 23 learned how to talk about what is troubling her and why she
 24 can't sleep at night, the things that keep her awake and give
 25 her a tummy ache. She has learned to verbalize that.

1 Q. And has Mary Macki given you some pointers in
 2 regards on how to deal with Grace and her situation?
 3 A. She has.
 4 Q. All right.
 5 A. Organizational skills and stuff like that that
 6 helps Grace better understand where she is at.
 7 Q. Did you advise Mr. Clayton of the fact that you
 8 were going to go to Mary Macki with your daughter?
 9 A. I did after about the fifth or sixth visits.
 10 Q. Okay. What was his reaction to that?
 11 A. He thought it was hypocritical of me to seek
 12 counseling for her since he thought I was against it.
 13 Q. Has he taken part in any counseling with your
 14 daughter and Mary Macki?
 15 A. Dr. Macki did request that he meet these last two
 16 sessions so that she could get a chance to see him interact
 17 with Grace.
 18 Q. Okay. Have you noticed any behavioral problems
 19 that exist in regard to your daughter since the time of the
 20 separation and institution of the parenting plan in this
 21 case?
 22 A. She's very angry and aggressive as far as her
 23 play routines. Usually the day or two after she has gone
 24 back and forth between households. And we have tried hard
 25 to minimize the conflict and the stress when she does come

1 home. But she does have a lot of anger towards me and
2 towards my family.
3 Q. Okay. I'd like to ask you some questions now in
4 regard to the child support in this case. Judge Barz entered
5 an order of child support of \$115 a month back in late '92.
6 Mr. Clayton is current with his child support payments, is he
7 not?

8 A. Yes.

9 Q. Okay. Where are you presently employed?

10 A. Allen's Tool Repair.

11 Q. And how much do you earn there?

12 A. \$23,192 a year.

13 Q. Okay. Does that break down to an hourly base?

14 A. Yes, it is \$11.15 an hour.

15 Q. And you work a full 40-hour week?

16 A. I do.

17 Q. Okay. Do you anticipate any dramatic changes in
18 your income in the near future?

19 A. I don't.

20 Q. Okay. Is your income affected by anything like
21 profit sharing or performance bonuses, anything like that?

22 A. No. I do get a bonus at Christmastime, usually
23 about \$100.

24 Q. Okay. Your daughter is presently enrolled in
25 daycare; isn't that right?

1 A. Yes.

2 Q. Okay. And where does she go to daycare?

3 A. Alice Mills' house. It's a private residence.

4 Q. And who is Alice Mills?

5 A. She is a friend of mine that I met through friends
6 and through church and --

7 Q. Okay. How long has your daughter been going to
8 Alice Mills for daycare?

9 A. A little over three and a half years, since she was
10 six months old.

11 Q. All right. Is she acclimated in that daycare
12 setting?

13 A. Yes.

14 Q. Does she seem to be happy there?

15 A. Yes.

16 Q. Are there other children that are -- that go to
17 daycare there as well?

18 A. Yes.

19 Q. Do you know how many?

20 A. About four.

21 Q. And has she made friends with those children?

22 A. Yes.

23 Q. How much does your daycare cost you?

24 A. \$50 a week.

25 Q. It strikes me that that is a very reasonable amount

1 of cost for daycare?

2 A. It is.

3 Q. The Court and probably the rest of my divorce
4 clients would like to know how you get that. Could you
5 explain to the Court why it is that it is such a reasonable
6 amount?

7 A. Because Alice is a friend of mine and she's doing
8 this to help me.

9 Q. Okay.

10 A. And we help each other out, back and forth.

11 Q. Is she doing it because of her affection for Grace
12 as well?

13 A. Yes.

14 Q. All right. Do you currently have your daughter
15 enrolled in a health insurance plan?

16 A. Yes.

17 Q. And what health insurance plan is that?

18 A. She is with Blue Chip through the State of Montana.

19 Q. And is there any cost to you for that health
20 insurance?

21 A. Not other than co-pays.

22 Q. All right. Are there any significant co-pays that
23 you have had to pay for treatment for your daughter?

24 A. No.

25 Q. You're aware, are you not, that there may come a

1 time that the Chips program might not exist, or also that you
2 might not no longer qualify for it; is that right?

3 A. Yes.

4 Q. You are aware, are you not, that in the petition
5 for dissolution we have asked the Court to enter a medical
6 support order whereby you and Mr. Clayton will be responsible
7 for medical care for your daughter?

8 A. Yes.

9 Q. And are you in agreement with that?

10 A. Yes.

11 Q. And would you like the Court to implement the plan
12 that is suggested in the petition?

13 A. Yes.

14 Q. Okay. You're aware, are you not, that I prepared
15 child support calculations that I filed with the Court in
16 this matter?

17 A. Yes.

18 Q. And you have reviewed those calculations?

19 A. Mm-hmm, yes.

20 Q. And the matters that are in those calculations as
21 to your income and appropriate expenses are accurate and
22 correct?

23 A. Yes.

24 Q. All right. Before I get into the matters of
25 property, I would like to just ask you a couple more

1 questions about the parenting plan this year.

2 In regard to the parenting plan, you're aware that
3 Mr. Clayton has filed a parenting plan request that
4 essentially your daughter be -- her time be divided equally
5 one week with you, followed by one week with Mr. Clayton, and
6 vice-versa, back and forth.

7 Do you believe that that type of an arrangement is
8 in your daughter's best interest?

9 A. No, I don't.

10 Q. Why not?

11 A. It provides too much of an unstable environment.
12 She would have two homes, but not actually have a home.

13 Q. Okay. Have you discussed the issues of the
14 parenting plan with Mrs. Macki?

15 A. I have.

16 Q. Okay. And has she offered opinion to you as to
17 the current arrangement as to whether it is appropriate or
18 not?

19 A. She feels it's appropriate, from what she has told
20 me.

21 Q. Now, from your earlier testimony, I gather, that
22 your daughter is well adjusted to her environment at daycare.
23 Can you tell the Court briefly about your home situation?

24 Does Grace have her own bedroom?

25 A. Yes.

1 Q. And in that bedroom does she have her own bed?

2 A. Yes.

3 Q. Okay. Do you have her toys and things at your
4 location?

5 A. Yes.

6 Q. And does she seem to be well adjusted to that
7 environment?

8 A. Yes.

9 Q. Okay. Are there any physical issues or mental
10 issues that Grace has that are of concern to you in regard to
11 the parenting plan?

12 A. She does have severe eczema, as well as possibly
13 ADD or ADHD. We're not sure on that yet, but we are keeping
14 an eye on that. And with the eczema she takes antihistamines
15 regularly, as well as a special cream to control her
16 outbreaks and help her sleep through the night, otherwise she
17 has nightmares all night.

18 Q. Is it important that she have a set routine in
19 regard to the eczema in order to minimize the effect of it?

20 A. Yes.

21 Q. And do you keep her on that routine, as best you
22 can?

23 A. I do.

24 Q. In regard to the ADD that you mentioned, you say
25 that she may have those issues. How has it come to your

1 attention that she might have those issues?

2 A. Her baby-sitter, Alice mentioned it to me, and a
3 couple of other friends who have watched her, have mentioned
4 that she tends to exhibit some of the symptoms of ADD. It is
5 hard to know for sure because she is not in school.

6 Q. Have you discussed those issues with Dr. Macki?

7 A. I have. And she thinks that Grace quite possibly
8 is --

9 Q. Okay.

10 A. -- ADD.

11 Q. Has she given you any guidance in regard to things
12 that you can do to minimize the impact of that potential
13 problem?

14 A. She has.

15 Q. And what are those?

16 A. Dietary issues, as well as environmental issues,
17 keeping her routine as set as possible and minimizing the
18 stress and back and forth in her life.

19 Q. And do you believe that the current parenting plan
20 arrangement minimizes the stress in her life as much as it
21 could be minimized in the midst of a divorce?

22 A. Yes.

23 Q. If the parenting plan was to be amended so that
24 Grace spent more time with Mr. Clayton, do you believe that
25 the results would be more or less stress to your daughter?

1 A. I think it would be more stress.

2 Q. And why is that?

3 A. Because she would be going back and forth even more
4 than she is now, and she would have one more situation she
5 has to adjust to.

6 Q. Okay. All right. Does your daughter seem to be
7 well adjusted to the current parenting plan arrangement?

8 A. Yeah.

9 Q. Okay. All right. I'd like to speak to you a
10 little bit about property now. You have heard me represent
11 to the Court that the personal property issues have been
12 resolved. And you are in agreement with that; is that right?

13 A. Yes.

14 Q. Okay. There is also a marital home that you own
15 with Mr. Clayton; is that correct?

16 A. Yes.

17 Q. And it was purchased during the course of the
18 marriage in roughly May of 1998?

19 A. Yes.

20 Q. Okay. And your in agreement, are you not, that the
21 best thing to happen is for that house to be sold and that
22 the proceeds remaining, after the debt obligation is paid
23 and costs of sale, etcetera, be divided between you and
24 Mr. Clayton; is that right?

25 A. Yes.

1 Q. Okay. You are also aware, are you not, that
 2 Mr. Clayton contends that the two of you are jointly
 3 responsible for an obligation of \$20,000 to his parents, or
 4 to his father at least, are you aware of that?
 5 A. Yes.
 6 Q. Okay. Mr. Clayton, as I understand it, will
 7 testify that that was a loan that was given to you folks to
 8 get that house. I'd like for you to tell the Court what you
 9 know about that matter in terms of the \$20,000 that was used
 10 to purchase the house?
 11 A. I was told that his father was giving us \$20,000
 12 for a down --
 13 Q. Who -- I'm sorry.
 14 A. Steve told me that his father was giving us a
 15 \$20,000 down payment so we could buy a house that was at
 16 least \$100,000.
 17 Q. Okay. When did he tell you that?
 18 A. Shortly before we started looking for a house,
 19 probably in March of '98.
 20 Q. Did he ever -- did you ever have any conversations
 21 with his father about that?
 22 A. I didn't, no.
 23 Q. Did anyone ever tell you that that arrangement was
 24 a loan?
 25 A. No.

1 Q. Did anyone ever ask you to execute a promissory
 2 note?
 3 A. No.
 4 Q. Did anyone ever present you with a repayment
 5 schedule in regard to the \$20,000?
 6 A. No.
 7 Q. To your knowledge, has any -- have any payments
 8 ever been made on that obligation by anybody?
 9 A. No.
 10 Q. Have you ever made any?
 11 A. No.
 12 Q. When did you first learn that there was an
 13 allegation that you owed his father a portion of \$20,000?
 14 A. A few months ago when I got a brief, or whatever --
 15 the paperwork from you.
 16 Q. Okay. I'll ask you straight out, what is your --
 17 what is your position in regard to the 20,000? Do you think
 18 you should pay it?
 19 A. No.
 20 Q. Or a portion of it?
 21 A. No.
 22 Q. Why not?
 23 A. Because it was given as a gift, and I didn't have a
 24 say in the matter anyway.
 25 Q. Okay. In regard to the home loan, the house was

1 purchased in May of 1998. And at the time that it was
 2 purchased, both you and Mr. Clayton were employed; is that
 3 right?
 4 A. Yes.
 5 Q. Shortly after Mr. Clayton lost his job; isn't that
 6 right?
 7 A. Yes.
 8 Q. How soon after?
 9 A. About three months after.
 10 Q. And where was he working at that time?
 11 A. Express Trailer Sales.
 12 Q. And do you know what he was -- what his job was?
 13 A. He was a salesman.
 14 Q. Okay. Did he replace that job right away?
 15 A. No.
 16 Q. Do you know what his income was at that job that he
 17 lost?
 18 MR. RINDAL: Objection, Your Honor. I'm not sure
 19 about the relevance, about what they made four, five, six
 20 years ago.
 21 THE COURT: It's very relevant. Objection
 22 overruled.
 23 BY MR. ALBACK:
 24 Q. Do you know how much he was making?
 25 A. He was on salary at \$22,000 a year plus commission.

1 Q. Okay. Since the time that -- the house was
 2 purchased in 1998, up until the taxes -- I'm sorry, up until
 3 the time that you folks separated in 2002, how much did you
 4 average in income per year for '98, '99, 2000, 2001?
 5 A. From about 18,000 a year to about \$22,000 a year.
 6 Q. Okay. All right. And during that same period of
 7 time, how much money did Mr. Clayton earn on average?
 8 A. A couple thousand --
 9 Q. Okay.
 10 A. -- for the year -- or for those three years.
 11 Q. Were there any times during that period of time
 12 that Mr. Clayton didn't work at all?
 13 A. Most of that period of time he was unemployed. I
 14 think he worked a total of maybe seven months.
 15 Q. Okay.
 16 A. In that three-year period of time.
 17 Q. What did he do to occupy his time?
 18 A. He went to school.
 19 Q. And where did he go to school?
 20 A. MSU-B.
 21 Q. And are you aware of what resulted from those
 22 academic pursuits?
 23 A. He earned a history degree.
 24 Q. Okay. And do you know when that was obtained?
 25 A. In May of 2002.

1 Q. Okay. There is also a contention that you and
2 Mr. Clayton are obligated to Mr. Clayton's father for a
3 loan apparently for a pickup truck or -- and I believe the
4 allegation is that it is roughly \$17,600. Tell the Court
5 what you know about that transaction?

6 A. Steve put in an order for a full size pickup truck,
7 and we started saving money for it and had about four or
8 \$5,000 in savings when the truck finally made it on the lot.
9 And he went down to get financing for the other portion of
10 it, and GMAC would only give him 21.9 percent.

11 So he called his dad and his dad overnighted the
12 cashier's check to him for the price of the truck.

13 Q. First of all, you said that we saved money, four or
14 \$5,000, who saved that money?

15 A. It was primarily taken from one of Steve's
16 paychecks a month.

17 Q. Okay. In regard to the money that he got from
18 his dad, did you have anything to do with that?

19 A. No.

20 Q. Did you have anything to do with negotiating the
21 purchase of the vehicle?

22 A. No.

23 Q. Did you have anything to do with trying to get a
24 loan with GMAC?

25 A. No.

1 Q. How did you come to know that this transaction was
2 taking place?

3 A. He called me and told me.

4 Q. Okay. At that time did you say, we're going to
5 borrow \$21,000 from dad?

6 A. Yeah.

7 Q. He did? And what did you say?

8 A. Okay, really?

9 Q. All right. Was it -- were you ever given a note
10 from his father in regard to that obligation?

11 A. No.

12 Q. Were you ever on the title to that truck?

13 A. No.

14 Q. At any point in time?

15 A. (Shook head negatively.)

16 Q. Is the pickup still owned by you folks?

17 A. No.

18 Q. Or by Mr. Clayton?

19 A. No.

20 Q. What happened to it?

21 A. It was sold about a year after purchase, and we
22 traded it for a '97 Achieva and some cash.

23 Q. All right. And at that point in time was
24 Mr. Clayton repaid for the loan that he had apparently made?

25 A. No.

1 Q. Who made that decision?

2 A. Steve did.

3 Q. Okay. You said that the pickup was sold,
4 Mr. Clayton obtained an Achieva automobile. That is the
5 Achieva automobile that is awarded to him by the stipulation
6 that you folks have entered into and that we represented to
7 the Court?

8 A. Yes.

9 Q. And so, in fact, the fruits of that loan are still
10 in Mr. Clayton's possession?

11 A. Yes.

12 Q. Are there other personal items that are on that
13 property distribution that Mr. Clayton purchased after the
14 sale of the pickup?

15 A. I believe there is a computer on there and a few
16 firearms, yes.

17 Q. Okay. And when was the pickup sold?

18 A. August of '99.

19 Q. Okay.

20 A. No, August of '98, excuse me.

21 Q. All right. And by that time Mr. Clayton had lost
22 his job; isn't that right?

23 A. Yes.

24 Q. And so by your testimony he was averaging an annual
25 income of roughly \$2,000 by that point in time?

1 A. Yes.

2 Q. And you were averaging between eighteen and 22,000?

3 A. Yes.

4 Q. Who was paying the bills?

5 A. I was.

6 Q. What do you have for a vehicle?

7 A. My personal vehicle is a '90 Dodge Ram.

8 Q. And that '90 Dodge Ram is a vehicle that you had
9 prior to the marriage to Mr. Clayton; isn't that right?

10 A. Yes.

11 Q. And so, as a matter of fact, you have not ended up
12 with a vehicle out of this at all?

13 A. No.

14 Q. Out of the marriage?

15 A. No.

16 Q. Isn't it also true that in regard to the
17 distribution of assets that we have agreed to with the
18 Court, that the values to those assets are values that were
19 apportioned by Mr. Clayton in his discovery -- or I'm sorry,
20 in his disclosure documents?

21 A. Yes.

22 Q. And isn't it true that those assets that he
23 allocated to you and that he -- are worth roughly \$2200 and
24 those that he allocated to himself are worth roughly \$10,600?

25 A. Yes.

1 Q. All right. I would now just like to talk to you
2 briefly about the obligations of the marriage. Okay? You
3 agree that there is a home mortgage?

4 A. Yes.

5 Q. And you agree that the house should be sold and
6 that mortgage paid for out of the sale?

7 A. Yes.

8 Q. Okay. At the time that you and Mr. Clayton
9 separated in June of 2002, what other debt did he have?

10 A. Three credit cards.

11 Q. And --

12 A. And personal student loans.

13 Q. All right. And the student loans -- pardon me, you
14 had a student loan, right?

15 A. I have three.

16 Q. Okay. And is it your position that you should end
17 up with those student loans?

18 A. Yes.

19 Q. And through discovery we learned that Mr. Clayton
20 has some student loans as well. Is it your request that he
21 be allocated with that obligation?

22 A. Yes.

23 Q. Okay. So apart from those and apart from the home
24 mortgage, the only other debt was three credit cards, right?

25 A. Yes.

1 Q. Okay. Those three credit cards were what at the
2 time you got the -- or separated, I'm sorry?

3 A. About three or 4,000 on one of them, 2,000 on one,
4 and a thousand on the other.

5 Q. Okay. And initially when you folks separated, was
6 an agreement reached as to who would take -- be responsible
7 for those debts?

8 A. Steve said he'd pay for them.

9 Q. Okay. In fact, Steve presented you with a document
10 that said that he would pay for them, did he not?

11 A. Yes.

12 Q. Okay. In his document he makes reference to the
13 Genus bill. Can you, just for clarification, tell us what
14 that is?

15 A. Genus was a debt consolidation program that I had
16 enrolled us in before we bought our house, or about the time
17 we bought the house.

18 Q. Okay.

19 A. So that we could consolidate all the credit cards
20 into one low monthly payment.

21 Q. Okay. Did you, subsequent to the time of your
22 separation -- first of all, who were the credit cards --
23 whose name were the credit cards in?

24 A. Mine.

25 Q. Not Mr. Clayton's at all?

1 A. No.

2 Q. Did there come a time that you learned that the
3 credit card payments weren't being made?

4 A. Yes.

5 Q. And when did that occur?

6 A. Shortly after Christmas when I started receiving
7 late notices in the mail.

8 Q. What did you do at that time?

9 A. I confronted him with it and he said he was
10 handling it. And two weeks later I got more late notices and
11 a phone call, so I started making payments on the credit
12 cards.

13 Q. Okay. Let's talk about the specific credit cards.
14 The first one is a Wal-Mart Mastercard; is that right?

15 A. Yes.

16 Q. And you have paid that one off entirely; is that
17 right?

18 A. Yes.

19 Q. How much did it take to pay that off?

20 A. It was about \$450.

21 Q. Okay. Then there is another Mastercard, which is a
22 Chase Mastercard; is that right?

23 A. A Chase Visa.

24 Q. Chase Visa, okay. And what is the current balance
25 on that one?

1 A. That one is about \$890.

2 Q. And how much have you paid to bring it down to that
3 balance?

4 A. About 300.

5 Q. Okay. And then the last one, you tell me because
6 I'll mess it up.

7 A. Is a Bank One Mastercard, it used to be a First
8 Card Mastercard.

9 Q. All right. And what is the balance of that?

10 A. It is at \$2,491.

11 Q. Okay. How much have you paid towards that
12 obligation?

13 A. About \$250.

14 Q. Okay. And that was after you became aware that the
15 payments weren't being made; is that right?

16 A. Yes.

17 Q. Okay. Is it your position -- what is your position
18 in regard to those credit cards? Who do you think should be
19 responsible for them?

20 A. I think he should be responsible for the balance on
21 them.

22 Q. Why?

23 A. Because he's -- he's keeping most of the property
24 that was bought with the credit cards.

25 Q. And what property by and large was purchased with

1 those credit cards?

2 A. Firearms, computer games, DVDs, electronic
3 equipment, computers.

4 Q. Any furniture?

5 A. A couch, a computer desk that I think he broke
6 after I moved out.

7 Q. All right.

8 MR. ALBACK: I have nothing further of this
9 witness, Your Honor.

CROSS-EXAMINATION

10 BY MR. RINDAL:

11 Q. Ms. Clayton, I just want to touch on just a few
12 points that you made. Since it's immediately in my mind,
13 let's talk about the credit cards. You talked about an
14 agreement that you and Steve had when you were first breaking
15 up. Did you and Steve sign some document?

16 A. No, sir. It was a document that he printed up and
17 gave to me.

18 Q. Did you agree to it?

19 A. No.

20 Q. Okay. But in that document -- you're testifying
21 now that he said he would pay them, and you testified to the
22 Court that you wished that he would pay them, apparently
23 because he was -- agreed to it?

24 A. He volunteered to do it.

1 Q. Sure. But you didn't agree -- you just testified
2 you didn't agree to that?

3 A. Not to the whole thing entirely.

4 Q. Okay. So the agreement was off, right?

5 A. Basically.

6 Q. Okay. Now, wasn't it in fact that those credit
7 cards were also used to buy food when you were married to
8 him?

9 A. Yes.

10 Q. Okay. And would you say you'd testify about 50
11 percent of the purchases were actually food for the family?

12 A. No.

13 Q. Okay. Do you have a percentage in mind?

14 A. I don't. But I'd say probably closer to 20
15 percent.

16 Q. Okay. And those credit cards were in just your
17 name?

18 A. Yes.

19 Q. And who used the credit cards?

20 A. Both of us.

21 Q. Okay. Going backwards, then, from your testimony,
22 you both -- you agreed that Steve should take his student
23 loan and you should take your student loan, correct?

24 A. Yes.

25 Q. And you testified that the home mortgage should be

1 paid off on the sale of the house?

2 A. Yes.

3 Q. Or refinanced?

4 A. Yes.

5 Q. Okay. I want to talk for a little bit about the
6 pickup. I believe you testified, and I don't have the exact
7 words in front of me, but that you had nothing to do with the
8 pickup?

9 A. Not from the financial end of it.

10 Q. Okay. Did you oppose Steve and you getting the new
11 pickup, buying the pickup?

12 A. No.

13 Q. Okay.

14 A. He was employed at the time.

15 Q. And did you in fact go down to the dealership and
16 help him pick it out, pick all the options?

17 A. A few of them.

18 Q. Okay. And did you -- did you use the pickup while
19 you were married to him?

20 A. I think I got to drive it three times.

21 Q. Okay. Do you know why your name wasn't put on
22 the -- on the title?

23 A. No.

24 Q. Okay. It wasn't because you and Steve discussed
25 your driving record and you were concerned with having the

1 insurance go up?

2 A. No.

3 Q. Did you and Steve sell that pickup?

4 A. Yes.

5 Q. Okay. And I believe you testified that you got
6 cash for it and then you received some Achieva that is valued
7 at \$1500. What did you do with the cash?

8 A. I think he put it in his bank account.

9 Q. And do you know what -- was it a separate bank
10 account or was it a joint bank account?

11 A. I don't recall, to be honest.

12 Q. Okay. Is it possible that that went into a joint
13 bank account to pay family bills?

14 A. It's possible.

15 Q. Okay. And do you recall when the sale of the
16 pickup was?

17 A. About August.

18 Q. Of?

19 A. Of '98.

20 Q. Okay. And you guys continued to be married and not
21 separated until four years later?

22 A. Yes.

23 Q. Okay. And is that -- all that cash that you got
24 from the pickup, is that gone?

25 A. It was gone before February of '99.

- 1 Q. Okay. So within six months, at least?
- 2 A. Yes.
- 3 Q. Okay. I want to talk a few moments about the
- 4 parenting plan. You're aware that Mr. Clayton has requested
- 5 additional time with his daughter; is that correct?
- 6 A. Yes.
- 7 Q. Has Mr. Clayton asked you to have his daughter on
- 8 his days off during the week?
- 9 A. About a year ago he did.
- 10 Q. Okay. And are you letting him have Grace on his
- 11 days off from work?
- 12 A. No.
- 13 Q. Okay. Why?
- 14 A. Because it's an unpredictable day, and when I have
- 15 to pay a baby-sitter a set rate a week, I can't take her
- 16 living away from her.
- 17 Q. So you -- is it your belief that it is better to
- 18 keep Grace in daycare than allow her father to have her on
- 19 his days off?
- 20 A. Yes.
- 21 Q. Okay. And one of those reasons is to insure the
- 22 financial stability of your daycare provider?
- 23 A. One of the reasons.
- 24 Q. Okay. Do you have other reasons?
- 25 A. Well, because she went to that daycare provider for

- 1 three years while he sat at home unemployed.
- 2 Q. Okay. Well, I'm not sure how the unemployed has
- 3 relevance. But regarding the daycare, she goes what days?
- 4 A. Monday through Friday, 8:30 to 5:00.
- 5 Q. And I believe you said that her name, Alice Mills,
- 6 she watches four other kids?
- 7 A. Let me count.
- 8 Q. Okay.
- 9 A. (Pause.) Yes.
- 10 Q. Okay.
- 11 A. Sometimes a fifth, but very rarely.
- 12 Q. Okay. So Grace and then four other kids that
- 13 you're aware of?
- 14 A. Yes.
- 15 Q. Are two of those kids your domestic partner's
- 16 children?
- 17 A. They are my boyfriend's children.
- 18 Q. Okay. Do you live with your boyfriend?
- 19 A. His children live with me.
- 20 MR. ALBACK: Objection as to relevance, Your Honor.
- 21 MR. RINDAL: I'm just -- it's a choice of terms,
- 22 Your Honor. I wasn't trying to say -- I said domestic
- 23 partner, boyfriend, they live together.
- 24 THE WITNESS: His children live with me, he has his
- 25 own residence.

- 1 MR. ALBACK: Your Honor, if I may. I'm going to
- 2 instruct my client not to answer. Whether they are two
- 3 people from Mars, it makes no difference, unless -- the
- 4 relevance of the fact that these children may be children of
- 5 someone that my client may have a relationship with is
- 6 improper.
- 7 MR. RINDAL: If I may --
- 8 THE COURT: The objection is overruled since it has
- 9 already been mentioned, but I agree with you on overall
- 10 relevance as far as this matter is concerned.
- 11 MR. RINDAL: And I apologize, Your Honor, I'm not
- 12 going into her relationship with her boyfriend. I'm talking
- 13 about the necessity of keeping Grace in the daycare.
- 14 BY MR. RINDAL:
- 15 Q. Right now I believe that you allow Mr. Clayton to
- 16 have Grace on every other weekend; is that correct?
- 17 A. Yes.
- 18 Q. And from what time does -- that Mr. Clayton picks
- 19 Grace up until when does he return her?
- 20 A. Usually about four o'clock on Friday and he picks
- 21 her up and he brings her home, or I pick her up at six
- 22 o'clock on Sunday.
- 23 Q. So approximately two full days?
- 24 A. Mm-hmm.
- 25 Q. And that's -- are you aware that he had to switch

- 1 his schedule around so he could have those weekends off with
- 2 her?
- 3 A. No.
- 4 Q. Okay. I would offer to you that testimony he will
- 5 testify that that is -- that is correct.
- 6 On the days that he has -- doesn't have the weekend
- 7 off, he gets days off during the week, Monday through Friday,
- 8 are you aware of that?
- 9 A. No.
- 10 Q. Okay. He'll provide testimony to that. Well, I'm
- 11 confused then, because you said you are not aware that he
- 12 gets days off during the week?
- 13 A. I don't know when his days off are because he
- 14 doesn't converse with me.
- 15 Q. Okay. If he converses with you and sends e-mails
- 16 his days off, say a week or two in advance, because he works
- 17 in a place that has different days off, then if you know in
- 18 advance, are you willing to have Grace during his days off?
- 19 A. No, because I'd have to find a different
- 20 baby-sitter. I can't ask my baby-sitter to hold open a
- 21 spot for a child who is only there half a week.
- 22 Q. What -- you say -- I believe you testified you pay
- 23 \$50 a week?
- 24 A. Yes.
- 25 Q. Is that like -- I'm terrible at math, but is it

- 1 like \$12.50?
- 2 A. \$10 a day.
- 3 Q. Excuse me, \$10 a day. So is it a daily rate or
- 4 weekly rate?
- 5 A. It is a weekly rate.
- 6 Q. So you pay whether she goes or not, correct?
- 7 A. Pretty much.
- 8 Q. Okay. Well, then, if Ms. Mills is getting paid
- 9 whether she is there or not, I don't understand why
- 10 Mr. Clayton can't have Grace on his days off?
- 11 A. Because financially it is not viable for me to be
- 12 paying a baby-sitter when she is not watching my child.
- 13 Q. Would it matter to you then -- I'm trying to get
- 14 this understanding, does it matter to you whether Alice
- 15 Mills, who is just the baby-sitter, watch Grace during those
- 16 hours, or Mr. Clayton, the father of Grace gets to watch
- 17 Grace during those hours? Does it matter to you?
- 18 A. Yes.
- 19 Q. Why?
- 20 A. Because when Grace is with Alice she gets to see
- 21 people, she goes places, she has fun. When she is with her
- 22 dad she tells me she watches TV, maybe plays in the yard or
- 23 goes to Wal-Mart.
- 24 Q. Okay. How old is your daughter?
- 25 A. Four.

- 1 Q. Okay. Is she very expressive? Does she tell you
- 2 everyday everything she does?
- 3 A. Yes.
- 4 Q. So she told about the park, recently going to the
- 5 park and playing?
- 6 A. She told me they went for a walk.
- 7 Q. Do you remember what day it was?
- 8 A. Just sometime this last week.
- 9 Q. What about on the 17th?
- 10 A. That was yesterday.
- 11 Q. Right. Did she tell you that?
- 12 A. Yeah.
- 13 Q. Okay. What did she do?
- 14 A. She ate pizza at daddy Steven's house with papa
- 15 and grandma, and grandma had a fever.
- 16 Q. Okay. Now, just yesterday, is it my understanding
- 17 that Steve's parents -- or the father came up, and he got to
- 18 see his granddaughter, which he is in California, correct?
- 19 A. Mm-hmm.
- 20 Q. So he doesn't see his granddaughter very often?
- 21 A. Yes.
- 22 Q. How many hours did you allow Steve to have Grace
- 23 yesterday?
- 24 A. I don't know. Steve picked Grace up at 8:30 at my
- 25 work, and I'm not sure what time he dropped her off at the

- 1 baby-sitter.
- 2 Q. You didn't give him instructions?
- 3 A. I didn't given him any instructions. He never
- 4 asked for any extra time.
- 5 Q. Okay. So then would it matter to you if he picked
- 6 up Grace every day at your work at 8:30 on his days off and
- 7 dropped her back off when you'd get off work?
- 8 A. Yes, because I don't know what days that would be.
- 9 And when she makes plans with Alice to go places, and she
- 10 doesn't know that her dad is going to pick her up, it makes
- 11 her very upset.
- 12 Q. Does Alice transport the children?
- 13 A. No, I do.
- 14 Q. Well, I'm confused then. You just --
- 15 A. Alice -- Alice plans things to do with the kids so
- 16 that they have a fun day. If she tells them, hey, we're
- 17 going to go to Rose Park tomorrow, and then Steve shows up to
- 18 pick her up instead, she is gypped out of going to Rose Park
- 19 and she gets upset because she is not expecting to see her
- 20 dad there and it messes up her routine.
- 21 Q. Is it your position then that it is more important
- 22 that she gets to do the little -- the little things with
- 23 Alice Mills than she spends additional time with her father?
- 24 A. I think it is important that she maintains a
- 25 schedule so she knows what to expect.

- 1 Q. So is that a yes, I didn't quite understand?
- 2 THE COURT: I think you are being argumentative on
- 3 this issue. I'm the one that is going to ultimately decide
- 4 the parenting plan
- 5 MR. RINDAL: I understand, Your Honor.
- 6 BY MR. RINDAL:
- 7 Q. Since the last meeting, I believe it was
- 8 October -- early October of 2002, did we -- did we discuss --
- 9 allowing Steve to have the right of first refusal when you
- 10 are not able to take care of your daughter?
- 11 A. Yes, and I signed paperwork saying that when
- 12 daycare is closed and I have to work, Steve has the right of
- 13 first refusal.
- 14 Q. But no other time?
- 15 A. That was all he asked for. That was the paperwork
- 16 you sent over and I signed.
- 17 Q. Have you been refusing to allow Steve to have -- to
- 18 spend time with his daughter other than the exact letter of
- 19 the T that Judge Barz said, every other weekend?
- 20 A. He has never asked for more.
- 21 Q. And Grace has never asked you to spend more time
- 22 with him?
- 23 A. No.
- 24 Q. Okay.
- 25 A. In fact, when she asks if she can call her dad, I

1 give her the phone and she punches the button and she calls
 2 her dad.
 3 Q. I believe you said that it is important for Grace
 4 to have her own space, her own bedroom and own bed, she has
 5 that at your place?
 6 A. She does.
 7 Q. How big is the house?
 8 A. It is a small two bedroom. I'm not intending to
 9 stay there forever.
 10 Q. Okay. How many people live in that house? How
 11 many children? I don't need names.
 12 A. Grace and I live there consistently, I have two
 13 other children that stay there occasionally.
 14 Q. Okay. And how old are those children?
 15 A. Three and five.
 16 Q. Do those children stay with Grace in her bedroom
 17 then?
 18 A. Yes, in their own beds.
 19 Q. You have three beds in there?
 20 A. I do. I built them bunk beds.
 21 Q. Okay. So if -- do you believe that if Steve would
 22 help you with that \$10 a day, it would -- do you believe that
 23 that \$10 a day payment from Mr. Clayton to Alice Mills would
 24 relieve that problem and having -- losing that slot?
 25 A. No, because it still affects her routine.

1 Q. Okay. I want to talk for just a few moments about
 2 that loan from Steve's father of 19,000 and some change. I
 3 believe you said that you had nothing to do with that?
 4 A. Which, are you talking about the truck or the --
 5 Q. Yes, the pickup truck which was \$19,000 and some
 6 specific change.
 7 A. I didn't have a say in the decision making of it.
 8 He called his father and asked for money.
 9 Q. Okay. Did you -- but I believe you testified that
 10 you also enjoyed the benefit of that pickup?
 11 A. Yeah.
 12 Q. And then when you guys sold it a year later, or
 13 whatever it was, that you used that money to help living
 14 expenses?
 15 A. Yes.
 16 Q. And so do you believe that that debt exists or does
 17 not exist?
 18 A. I don't believe it exists for me. I mean --
 19 Q. Well, I want to clarify that then. What do you
 20 mean that it doesn't exist for you?
 21 A. It was money that Steve borrowed from his dad.
 22 Q. Okay. And it went to benefit you also?
 23 A. For a short period of time, yes.
 24 Q. For how long?
 25 THE COURT: Have you heard of the Statute of

1 Frauds, Mr. Rindal? There is nothing in writing showing
 2 there is any obligation whatsoever. That might give you a
 3 clue how that is going to turn out.
 4 BY MR. RINDAL:
 5 Q. Ms. Clayton, have you ever paid -- made payments to
 6 Mr. Clayton for that loan?
 7 A. I have.
 8 Q. Why?
 9 A. Because Steve's dad was so generous giving us money
 10 every time he lost his job, that when he said pay me \$300 a
 11 month and that is fine. I sent him \$300 a month as long as I
 12 could afford to pull it out of our finances.
 13 Q. But that -- so you admit that there was a loan and
 14 you made payments?
 15 A. I did.
 16 Q. Okay.
 17 A. I made payments.
 18 Q. On that loan. Thank you.
 19 I don't recall if you answered this question, I'll
 20 say it and if you have already said it, I apologize. When
 21 you separated with Steve, you had three credit cards or four
 22 credit cards?
 23 A. Three.
 24 Q. Okay. And you and Steve made payments on those?
 25 A. Steve made payments until about Christmas.

1 Q. Okay.
 2 A. When he quit making payments.
 3 Q. And then you started making payments on those?
 4 A. I started because he quit making payments. I was
 5 getting the late notices.
 6 Q. Was there other family obligations, other family
 7 debts that Steve continued to pay that you didn't pay?
 8 A. He was paying on the house payment, as far as I
 9 know.
 10 Q. Okay. How much was that house payment?
 11 A. When I left it was \$685.31.
 12 Q. So round it to, say, 685, would be fair?
 13 A. (Nodded head.)
 14 Q. Okay. And Steve made -- has been making those
 15 payments as far as you know?
 16 A. As far as I know.
 17 Q. How much have you been paying each month on those
 18 credit cards?
 19 A. Whatever the minimum balance is and whatever else I
 20 can scrape out of my account. Usually around hundred bucks a
 21 card.
 22 Q. Okay. And there was three cards you said?
 23 A. Yes.
 24 Q. So that is about \$300 a month?
 25 A. Yes.

1 Q. Do you think that's fair that you are paying the
2 credit cards payments and Steve was paying the house
3 mortgage?

4 A. No.

5 Q. You went at some great length about how much Steve
6 did or did not make in the last five, six years. Are you
7 contending that you are the only bread winner or the main
8 bread winner until you split up?

9 A. Primarily.

10 Q. Okay. And so it was your income only, pretty much,
11 that paid all the bills?

12 A. For the most part, yes.

13 Q. Do you and Steve have gambling problems?

14 A. I don't.

15 Q. Do you think Steve does?

16 A. Not that I'm aware of.

17 Q. Is there any addiction problems, alcohol, drugs,
18 nothing like that?

19 A. No.

20 Q. Okay. Is it -- from your memory, is it your
21 testimony -- or let me ask it a different way. Did
22 Mr. Clayton, Steve's father, also supplement your income for
23 a long time period of time?

24 A. Steve's dad sent anywhere from 750 a month to
25 \$1500 a month for every month that Steve wasn't in -- Steve

1 wasn't working.

2 Q. Okay. Well, you made a big -- like I said, you
3 made a big issue about how much you made compared to he, and
4 that is five, six years ago. How do you think that that's
5 relevant to --

6 THE COURT: I will tell what is relevant and what
7 isn't. You are invading my province.

8 MR. RINDAL: Your Honor, I don't intend to do that.
9 I'm trying to -- she made a point of bringing it out, I was
10 curious --

11 THE COURT: She didn't make a point out of it, you
12 did.

13 MR. RINDAL: Nothing further, Your Honor. Thank
14 you very much.

15 MR. ALBACK: Just a couple of questions, if I may,
16 Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. ALBACK:

19 Q. Mary Beth, Mr. Rindal asked you -- the way he asked
20 you was that you have only allowed Mr. Clayton certain
21 visitation. Isn't it true that what you -- the visitation
22 that he has gotten has been the visitation that was
23 established by this Court after the hearing in September of
24 2002?

25 A. Yes.

1 Q. And isn't it true that you followed that to the
2 letter?

3 A. Yes.

4 Q. And that you have never denied him visitation of
5 that nature at all?

6 A. No.

7 Q. Isn't it also true that at some point in time you
8 allowed Mr. Clayton to take your daughter to an extended trip
9 to visit his parents in California?

10 A. Yes.

11 Q. Did you ever balk at that when it was suggested
12 that he wanted to do that?

13 A. I asked him to wait until after the custody
14 hearing.

15 Q. All right. And she went and you're glad about
16 that; isn't that correct?

17 A. Yes, she enjoyed herself.

18 Q. Okay. He asked you about the concerns you have,
19 I'm sorry, you testified that you had concerns about what
20 happens at Mr. Clayton's home. One of the criteria in regard
21 to the best interests of the children are mental health
22 issues. Does Mr. Clayton have some mental health issues that
23 cause you concern in regard to your daughter?

24 A. He was treated for depression a few years ago, but
25 that was about it.

1 Q. Have you evidence -- do you know, has he -- has he
2 been under medication for depression?

3 A. He was trying Paxil for awhile.

4 Q. All right. Do you have concerns about how his
5 depression exhibited itself in his daily life?

6 A. He keeps pretty much to himself and Grace is a very
7 social person.

8 Q. How about in terms of at his home, what type of
9 activities -- when the two of you were together, what type of
10 things would he do to occupy his time?

11 A. Watch TV and play on the computer.

12 Q. Okay. Mr. Rindal asked you about payments you had
13 made to Mr. Clayton's father in the amount of \$300 each
14 apparently. Those payments that were made to him, what were
15 the circumstances -- I'll ask it another way. I apologize.

16 Who took care of paying the bills, writing the
17 checks to pay the bills when you and Mr. Clayton were
18 together?

19 A. I did.

20 Q. Okay. And so the checks that -- did the two of you
21 pool your money together at that time as well?

22 A. Yes.

23 Q. And so was it your intention that payments that you
24 were making were evidencing your belief that you owed
25 Mr. Clayton personally for that debt?

- 1 A. No, it was just a check to his dad.
 2 Q. Okay. Student loan payments, did they come out of
 3 that check too -- or out of that account too, yours and his?
 4 A. I don't believe he had any at the time, but mine
 5 came out of our joint account.
 6 Q. Okay. All right. And that is an obligation that
 7 you are taking as your sole and separate in this matter,
 8 right?
 9 A. Yes.
 10 Q. One final thing, Mr. Clayton -- or Mr. Rindal asked
 11 you about, do you think it is fair that he made the house
 12 payment and you paid so much towards the credit cards. Who
 13 was living in the house?
 14 A. He was.
 15 Q. All right. And isn't it true that during that
 16 period of time that he was living in the house, at least for
 17 a portion of the time, he had a tenant?
 18 A. Yes.
 19 Q. Who was paying him rent?
 20 A. Supposed to be paying him rent.
 21 Q. Did he ever tell you how much rent he was getting
 22 for that?
 23 A. No.
 24 Q. Did he ever share any rental income from that
 25 property with you?

- 1 A. No.
 2 MR. ALBACK: Nothing further, Judge.
 3 RE-CROSS-EXAMINATION
 4 BY MR. RINDAL:
 5 Q. Ms. Clayton, you said that he never shared with you
 6 how much he got. Do you recall the October, I think 9th
 7 hearing, when it was on testimony here in front of this judge
 8 that he was making -- or he was getting \$300 a month; do you
 9 recall that?
 10 A. No. We had a hearing in September.
 11 Q. I'm sorry. I could be wrong on the date.
 12 A. And when I asked him personally how much he was
 13 getting for rent, he walked, turned around and walked in and
 14 shut the door.
 15 Q. We had a hearing and he told you then?
 16 A. Not that I am aware of.
 17 Q. It is in the court record, that is what he used to
 18 set the child support. This -- Judge Barz took that into
 19 account and set it on the child support.
 20 A. I don't recall.
 21 Q. Okay. And do you recall then also your income,
 22 Mr. Clayton's income went into this joint account that you
 23 say now, they -- your were commingling your funds, you put
 24 your check in, he put a check in, but you are the one that
 25 did most of the actual check writing?

- 1 A. Yes.
 2 Q. Okay. You said during your marriage when you were
 3 still together with Mr. Clayton that he spent most of his
 4 time watching TV or playing on the computer, correct?
 5 A. Yes.
 6 Q. Wasn't in fact that Mr. Clayton was in college
 7 during that period of time and he was on the computer
 8 working?
 9 A. Some of the time.
 10 Q. Okay. So is it your -- is it your belief now, I
 11 mean apparently it seems like you're saying that when he has
 12 Grace that he doesn't do anything with her?
 13 A. Grace tells me that they go to Wal-Mart and they
 14 play with her dog, and occasionally they will take a walk.
 15 But that is usually the extent of what she has done.
 16 Q. Mm-hmm. Okay. I believe you testified also that
 17 you never restricted any contact with between Mr. Clayton and
 18 his daughter, no extra time; is that correct?
 19 A. As far as what the Court ordered, yes, that's
 20 correct.
 21 Q. No, I believe I asked you specifically if you
 22 ever -- if he ever -- if Mr. Clayton ever asked you to spend
 23 more time with her, and I asked if you ever said no. And I
 24 think you said, I don't refuse; is that correct?
 25 A. I'm trying to figure out what you are asking, but

- 1 just a second.
 2 Q. You testified that you followed the Judge's
 3 parenting plan to an T?
 4 A. Yeah. And when she has been at daycare, she has
 5 been at daycare. When it has been his days, she has been
 6 with him.
 7 Q. And it's still your absolute position that he
 8 shouldn't be allowed to spend any more time, rather that it
 9 is better to keep her in daycare?
 10 A. Yes.
 11 MR. RINDAL: Okay. Nothing further, Your Honor.
 12 MR. ALBACK: I have nothing further, Judge.
 13 THE COURT: You may step down.
 14 MR. ALBACK: The petitioner calls Mary Macki, Your
 15 Honor.
 16 MARY MACKI,
 17 called as a witness, and having been first duly sworn, was
 18 examined and testified as follows:
 19 DIRECT EXAMINATION
 20 BY MR. ALBACK:
 21 Q. Would you state your name, please?
 22 A. Mary Macki.
 23 Q. And where do you reside?
 24 A. In Billings, Montana.
 25 Q. All right. And what do you do for a living?

- 1 A. I'm a licensed clinical professional counselor.
 2 Q. How long have you been such a licensed clinical
 3 professional counselor?
 4 A. For seven years.
 5 Q. All right. What is your educational background?
 6 A. And I have master's in education -- a master's in
 7 counseling, a bachelor's in education, sociology and
 8 psychology.
 9 Q. All right. And in your present employment
 10 situation, what do you do?
 11 A. I work primarily with children, but in it I also do
 12 mediation. I do a lot with parenting plans, custody
 13 investigations, evaluations, supervised visitation, mediation
 14 with divorced couples.
 15 Q. Okay. Have you had experience in that line of
 16 work? Other than your counseling business, do you have a
 17 past history of -- that is appropriate to what you do now?
 18 Court services or anything like that?
 19 A. No, sir.
 20 Q. All right. Okay. Have you testified as an expert
 21 witness in divorce proceedings before?
 22 A. Yes, sir.
 23 Q. Okay. How many times? Ballpark.
 24 A. More than 50, closer to 100 probably.
 25 Q. Okay. And how many families would you estimate you

- 1 have dealt with in your career as a counseling or in these
 2 types of issues?
 3 A. In regards to custody?
 4 Q. In regards to custody matters, yes.
 5 A. Once again, easily 50 to 100.
 6 MR. ALBACK: Your Honor, I'd ask that this client
 7 be accepted by the Court as an expert witness in this matter.
 8 THE COURT: She is designated as an expert witness
 9 by this Court.
 10 MR. ALBACK: Thank you, Your Honor.
 11 BY MR. ALBACK:
 12 Q. You are familiar with the parties to this matter;
 13 isn't that right?
 14 A. Yes, sir.
 15 Q. Okay. You know Mrs. Clayton and Mr. Clayton?
 16 A. Yes.
 17 Q. And their daughter Grace?
 18 A. Yes, I do.
 19 Q. Okay. Could you tell the Court briefly how it is
 20 that you have become involved in this matter?
 21 A. I was contacted by Mary Beth Clayton in regards to
 22 visiting with her daughter Grace. There were concerns about
 23 some anxiety, there is also some -- the fact that she's just
 24 turned four. There is also concerns about -- what I have
 25 seen as concerns, there's boundary issues. There are some

- 1 anxiety issues.
 2 She has some manic complaints as far as tummy
 3 aches, headaches.
 4 Q. All right.
 5 A. Pretty much adjustment issues to the whole
 6 situation at hand.
 7 Q. And in your experience is that somewhat typical in
 8 these types of situations?
 9 A. Yes.
 10 Q. Has it been your experience or your observation
 11 regarding Grace that her symptoms that she is exhibiting are
 12 any worse than the average, or is there anything that really
 13 stands out that causes you great concern?
 14 A. The biggest thing that stands out that causes me
 15 great concern is her boundary issues, is it -- it isn't as
 16 directly related to the divorce so much as it is to learning
 17 appropriate ways for her to identify strangers, not to be so
 18 familiar with people, safety needs in that area.
 19 Q. Okay. All right. And in the course of your
 20 contact with Grace, have those sessions been with Mary Beth
 21 as well?
 22 A. Yes.
 23 Q. Okay. Have you had sessions with Grace and
 24 Mr. Clayton?
 25 A. Yes.

- 1 Q. Okay. How many with Mr. Clayton, do you remember?
 2 A. Two.
 3 Q. All right. Are you aware of the current parenting
 4 arrangement that is in place in this case?
 5 A. Yes, I am, sir.
 6 Q. And you're aware that this was a -- it's every
 7 other weekend plus two evenings a week?
 8 A. Yes.
 9 Q. In your profession opinion, do you believe that
 10 that is a proper parenting arrangement for these people and
 11 that little girl in this situation?
 12 A. Yes, sir.
 13 Q. Mr. Clayton has filed documents with the Court
 14 where he has requested that the visitation be amended to be
 15 essentially alternating weeks; that he would have Grace for
 16 one week, then she would be with her mother for the next week
 17 and so on, so forth down the line.
 18 Do you have an opinion as to whether or not that
 19 would be a favorable arrangement?
 20 A. This is the first I had heard about this
 21 suggestion. I will say looking at both of these parents and
 22 watching this child interact, she is very, very much bonded
 23 to both of her parents. She has a very healthy relationship
 24 with both parties. I will say that she -- what I have seen
 25 is she identifies her primary home base, her primary

1 residence as with Mary Beth. But she certainly has the
2 utmost -- you know, a very healthy relationship with her
3 father.

4 Q. Good.

5 A. On a personal level I find, and on a professional
6 level, those children at this early of an age that already
7 begin the alternating weeks, it is fairly disruptive in their
8 life because of trying to establish some type of stability.

9 Q. I take it, then, that it would be your opinion that
10 Grace's identification with her mother's residence as being
11 the primary residence is probably healthier -- I was going to
12 say necessary, but that is probably a little too far. That
13 it is appropriate, do you think?

14 A. Taking into consideration her age and developmental
15 level, yes.

16 Q. Okay. In the course of your time with Grace and
17 the Claytons, have you become concerned about perhaps some
18 ADD -- potential ADD problems with Grace?

19 A. Yes.

20 Q. Okay. And what is your opinion in that regard?
21 How has it come up? What is it about her that has caused you
22 to notice that or be concerned about?

23 A. Her lack of boundaries, her busyness, her
24 impulsivity. They usually do not test for ADHD until once
25 the child is in school because then you can chart how many

1 out-of-seat behaviors and that type of thing.

2 But her attention span, she is a bright little
3 girl, but she's very easily distracted. She's very -- her
4 lack of concentration because of the distractibility. Her
5 high risk behavior, no fears as far as boundaries. Comes
6 bounding into my office, snoops in everybody else's -- or
7 snooped in my partner's office prior to our appointment.
8 Those type of things.

9 Q. All right. Is stability and continuity of care, is
10 that an important factor in dealing with ADD, whether it is
11 diagnosed or potential?

12 A. Yes.

13 Q. Okay. And I don't want to put words in your mouth,
14 but is it safe to say that the greater the continuity, the
15 greater stability, the greater -- or the less problem that
16 the ADD might evidence, is that correct?

17 A. Correct.

18 Q. All right.

19 MR. ALBACK: I have nothing further of this
20 witness, Your Honor.

21 THE COURT: Thank you.

22 MR. ALBACK: Thank you, Doctor.

23 CROSS-EXAMINATION

24 BY MR. RINDAL:

25 Q. Good afternoon, Ms. Macki.

1 A. Good afternoon.

2 Q. I hope you -- I apologize for not calling you
3 Dr. Macki, but they are misidentifying you, you are not
4 Dr. Macki --

5 A. No, I am not.

6 Q. Your a master's, just to clarify the court record
7 and Mr. Alback's information.

8 We have worked before together, haven't we?

9 A. Yes, sir.

10 Q. And I respect your opinion and I'm glad you are
11 here. When did Ms. Clayton contact you?

12 A. Our initial visit was February 11th.

13 Q. Of this year?

14 A. Yes, sir.

15 Q. Okay. Did she share -- did Ms. Clayton share with
16 you at that time what the parenting plan was?

17 A. Yes.

18 Q. Okay. Have you discussed with Ms. Clayton that
19 Mr. Clayton was requesting additional time with his daughter?

20 A. No, I have not.

21 Q. Okay. Has that ever come up, until today?

22 A. Correct.

23 Q. Okay. You are not privy to the court documents,
24 but we're not requesting primary residence be changed, and
25 certainly your testimony sounds like Grace has identified the

1 primary residence, at least her focus of location, is with
2 Mary Beth; is that correct?

3 A. Correct.

4 Q. Okay. Do you believe it's important for children,
5 especially young children, to spend as much time with both
6 parents as possible?

7 A. If it is in a healthy relationship, yes.

8 Q. Okay. Well, let me ask you then, I believe you
9 testified that you have observed -- and how many times have
10 you seen Grace?

11 A. I'll have to count.

12 Q. Ten, 11 times, I think you said.

13 A. Nine.

14 Q. Nine times. Okay. I believe you testified that
15 you have observed that Grace is much bonded with both
16 parents?

17 A. Correct.

18 Q. Okay. And I believe you also testified -- and this
19 is almost a quote, she has a very healthy relationship with
20 both parents?

21 A. Correct.

22 Q. Okay. So keeping that in mind, that she has bonded
23 with both parents quite well, and she has a very healthy
24 relationship with both parents, is it then beneficial to a
25 child to spend as much time with both parents, in a difficult

1 situation such as a divorce, or to minimize contact with one
2 parent?

3 A. I would say spend as much time -- and once again I
4 want to qualify that, if it is healthy, good quality time.

5 Q. Okay. But you said that they have a very healthy
6 relationship?

7 A. That is what was demonstrated to me, yes.

8 Q. Do you have any other indication or observation
9 that would make you believe that they don't have a healthy
10 relationship?

11 A. Grace had said some things to me, and I addressed
12 this with both parents. Some of the concerns that she had
13 said is that her daddy Steven has called her step -- I don't
14 know what to call him, but has called mother's significant
15 other, trash, garbage, trash bags, that type of thing, which
16 does make this child -- I think is difficult for this child.

17 So if that were to cease, then I think it is much
18 health -- would be much healthier.

19 Q. And you've discussed that with Mr. Clayton?

20 A. I brought it up to Mr. Clayton that she had said
21 that. At that point he seemed very surprised that she would
22 say that. And it was my indication that he wasn't sure where
23 she would have gotten that information.

24 Q. Okay. Have you -- since you discussed that with
25 him, and I don't know, I think you saw him twice, has there

1 been any other reports of allegedly improper communication?

2 A. No, because I just saw Grace one other time, and
3 that once again was with her father. And she didn't say --
4 when her father is there, she doesn't state anything about
5 this Ronnie.

6 When her father is not there, one time we were
7 playing the Barbies, she took the men -- we have two men
8 dolls, and we named one as Ronnie, one as Steven. She took
9 the Steven doll, went over, slammed the Steven doll against
10 the Ronnie doll and said, her daddy doesn't like Ronnie, and
11 she didn't want Ronnie there, so that the Steven doll was
12 very aggressive towards the Ronnie doll.

13 Q. And I believe you said -- you indicated that the
14 counseling that you have been doing with Grace, is not
15 related so much to divorce, but more about anxiety, boundary
16 issues and manic complaints; is that correct?

17 A. That is what she came to see me as, those were the
18 initial issues. As we have worked, I have worked with her as
19 far as the loyalty, the fact that she feels -- just -- that
20 was one of the first sessions, just to get an idea of where
21 this child was at. We did the dolls, trying to help this
22 child relieve some of the anxiety.

23 I feel that she feels torn between her loyalties.
24 I know that she -- when her father, in front of her father
25 she did not, as I said before, talk about this Ronnie at all.

1 In front of her mother she feels much more
2 comfortable talking about both parties. And right there, it
3 led me to feel that this child feels real torn. When with
4 mom it is okay to feel this; with dad, she can't feel this;
5 with mom, she says negative things about dad; but with dad,
6 she doesn't want to address anything.

7 I would bring the things out, and the first time
8 Steven came, everything we tried to do she says, I don't like
9 this, I don't like this game.

10 Q. Now, I believe you have seen Grace nine times
11 total, you said?

12 A. Correct.

13 Q. Two times with Mr. Clayton, so that, I'm guessing,
14 seven times then with Mrs. Clayton?

15 A. In the room, yes.

16 Q. Sure. Would it be beneficial to continue the
17 counseling with Mr. Clayton in there so that possibly Grace
18 would start to feel more comfortable communicating?

19 A. And I'm comfortable with that, yes.

20 Q. Sure. And you think that would be beneficial then?

21 A. Yes.

22 Q. I believe you said, you testified that you have
23 counseled 50 to 100 clients, and I know you said, you
24 testified you thought as than expert over 50, but possibly as
25 high as 100.

1 A. Yes.

2 Q. In those -- let's just round it to 100, just in
3 case. In those hundred cases, is this the first case of a
4 four-year-old girl in a divorce case where she expresses
5 anxiety and misunderstanding and communication problems like
6 she is doing now, like Grace is specifically?

7 A. No, sir.

8 Q. Is it a very normal thing?

9 A. Yes, sir.

10 Q. Okay. So nothing really -- this is not like a huge
11 warning sign, but it is definitely something the parents need
12 to work on, their communications?

13 A. Correct, and the fact that she is having some manic
14 complaints.

15 Q. Sure. Sure. When you had Mr. Clayton in the
16 counseling sessions those two times, when did they first
17 start?

18 A. Just recently.

19 Q. Mm-hmm.

20 A. The first one was June 3rd.

21 Q. Okay. And whose scheduled those?

22 A. Steven called, I asked Mary Beth if I would be able
23 to see and meet with Steven and Grace as well.

24 Q. Mm-hmm.

25 A. And she notified Steven and he called me and

1 scheduled.

2 Q. Okay. Is it -- is it common in your -- the
3 counseling profession to counsel with one -- during a divorce
4 case, shall we say, to counsel with just the child and one
5 parent only, or do you try to incorporate both parents in?

6 A. I try to incorporate both parents.

7 Q. Okay. Is it your -- using your many years of
8 experience with client counseling, do you believe that if you
9 have continued counseling sessions between -- with Grace and
10 Mr. Clayton, that she will become less anxiety-ridden and
11 lose maybe some of the manic complaints that she has now?

12 A. That is our goal.

13 Q. Okay. All right. And do you believe, then, that
14 if -- if Mr. Clayton is allowed to spend more time with her
15 and be it in your office and outside your office, that that
16 might help facilitate better communication skills between
17 them, the daughter and the father?

18 A. Yes, if it is appropriate.

19 Q. Okay. Well, it is a very nebulous term,
20 appropriate. Do you have some guidelines or suggestions
21 that what you would consider or feel safe suggesting that
22 would allow Mr. Clayton to spend more time with his daughter,
23 that you would consider safe or appropriate?

24 A. And I have talked to Mr. Clayton about this, we
25 talked about Grace's developmental level, that at her age she

1 is not able to abstract. Some of the things that he just
2 says in passing like, he is going to move, and then he talked
3 about his parents coming. Somehow Grace surmised that her
4 dad was moving to California to live with his parents.

5 So we just kind of talked about developmental type
6 of things. My suggestion would be not to even address her
7 mother's living situation, to just make the relationship that
8 he has with Grace as positive as can be. She does have a
9 good relationship with him, she enjoys going to movies with
10 him.

11 We talked about -- she mentioned she was afraid in
12 her bedroom at his house and he decided it was probably
13 because of real dark curtains. He has got night lights, just
14 simple little things like that, to make it less of an
15 adjustment for her.

16 Q. So is it your belief that Mr. Clayton is responding
17 appropriately to some of her fears or problem areas in
18 communication?

19 A. Yes.

20 Q. And with this idea of her developmental -- and I
21 understand that, you know, she is four years old and they
22 grow quickly, but she has a lower level of abstract thinking,
23 or actually she hasn't even attained that level, correct?

24 A. Correct.

25 Q. So isn't it true that she may be picking up pieces

1 of sentences or communications and extrapolate them into some
2 concrete, this is happening?

3 A. Correct.

4 Q. Okay. So is it possible, then, that what Grace
5 said about -- that her daddy hates Ronnie or whatever, she
6 could have picked up just saying that they are going through
7 a divorce, that he is upset that, you know, he is no longer
8 in her life everyday; is that possible?

9 A. Yes.

10 Q. Regarding the moving and the moving to California,
11 are you aware that the parties have to sell their house?

12 A. Yes.

13 Q. Okay. So that is what he means by moving, and his
14 parents did come from California. So, I mean, do you have a
15 grasp -- are you able to discuss that with her now?

16 A. We talked about it on Tuesday, yes.

17 Q. Great. Great. Is there any other suggestions or
18 guidelines that can be provided today from you to the Court
19 and Mr. Clayton that you would be comfortable with that would
20 allow Mr. Clayton to spend more time, that would be
21 beneficial for Mr. Clayton to spend more time with his
22 daughter?

23 A. One other time she had said that -- let me find,
24 she said, just out of the blue, we were playing a game and
25 she says her mommy breaks her daddy Steven's heart because

1 she won't live with her daddy Steven. And she said that her
2 daddy told her that her mommy has an ovy in her head and it
3 it's inside so that she can't see it, but it breaks daddy's
4 heart.

5 And I can understand him trying to explain, and
6 regardless of him -- his explanation, her comprehension. I
7 think many times children begin -- they see parents display
8 feelings of sadness, some depression, and children feel that
9 they are responsible for that.

10 Q. Certainly.

11 A. So I'm concerned that Grace may feel that she is
12 responsible for her daddy's emotional being. So rather
13 than -- whether you said it or not, I don't know, but the
14 fact that this is what she shared with me, it might be easier
15 just to not even discuss.

16 THE COURT: Dr. Macki, I have a question having
17 heard you and read your reports on many occasions, wouldn't
18 it be a more practical solution in this particular case to
19 require further counseling between Steve and this child and
20 yourself, more counseling before we go into spending more
21 time with this child.

22 THE WITNESS: Correct.

23 THE COURT: That would be your bottom line
24 recommendation, wouldn't it?

25 THE WITNESS: You're right, Your Honor.

1 BY MR. RINDAL:

2 Q. Do you have a suggestion, then, to the Court and to
3 myself and Mr. Clayton what you would think would be
4 appropriate? What type of counseling, how much counseling
5 between Mr. Clayton and Grace and yourself before he is
6 allowed to spend more time?

7 I'd like to kind of pin this down so when we leave
8 today, we can -- that is a goal that we need to start working
9 towards.

10 A. Mm-hmm. And, truthfully, I haven't talked with
11 either party to know what their future plans are. I don't
12 know if she has extended time according to the interim
13 parenting plan to have any vacation time with her father.
14 I'm not aware of the current, other than the alternating
15 weekends and twice during the week. I'm not aware of the
16 rest of the interim parenting plan.

17 To answer your question, I would say to meet one,
18 two more times, maybe more often than alternating weeks. And
19 some of that we'll have to discuss as far as the logistics
20 with insurance, etcetera.

21 And then I would like to meet with Grace without
22 either parent.

23 Q. Certainly.

24 A. Just to see where -- I know that she and I have a
25 good enough relationship, she certainly is very free-flowing

1 on what she has to say, that I could surmise if in fact
2 it's -- she has less anxiety, it will also show in her lack
3 of tummy aches, her lack of scary dreams, running to mom and
4 dad in the middle of the night because of her night -- her
5 scary dreams.

6 Q. Sure. And I apologize, I was listening to the
7 whole long sentence, and I missed the outlying thing. Did
8 you say you thought possibly one or two more times of
9 counseling before any more extended time or --

10 A. When you are saying --

11 THE COURT: I think it is a matter of quality time
12 and what she can accomplish.

13 MR. RINDAL: I understand, Your Honor.

14 THE COURT: And you are once again invading my
15 province, too.

16 MR. RINDAL: Your Honor, she is an expert witness.
17 I want to get suggestions from her so we can organize this.

18 BY MR. RINDAL:

19 Q. Ms. Macki, you had mentioned that Steve was allowed
20 to see his daughter for a couple times a week, I believe. I
21 don't recall the days, maybe Wednesday, something like that,
22 for a couple hours. If that happens to coincide with one of
23 his days off, would it be okay if he spent a few more hours,
24 instead of two hours, he is allowed two hours, I believe, on
25 his nonweekend days, weekend cycles, perhaps two or three

1 more hours might -- is that going to cause a problem?

2 MR. ALBACK: Your Honor, I'm not objecting so much
3 as clarifying. The witness, if she is going to answer a
4 hypothetical question, it should be based upon the facts.
5 And the facts are that Mr. Clayton is entitled to two
6 four-hour periods per week -- during the week days of every
7 week, not the two hours that Mr. Rindal is talking about.

8 And if he is talking about two hours and would two
9 or three more hours be helpful when he is already getting
10 four hours, it makes a big difference as to what we're really
11 talking about here.

12 So the record speaks for itself in terms of what
13 the order is of this Court and what is in force at this point
14 in time, and that is that that child spends four hours two
15 nights per week with Mr. Clayton as it is.

16 Thank you.

17 MR. RINDAL: And that is correct. I didn't have
18 the document in front of me, and I apologize, it wasn't -- it
19 was a misspoken statement. I just knew he got two times, and
20 I apologize. It is four hours. And Mr. Clayton just
21 confirmed that.

22 BY MR. RINDAL:

23 Q. And my question still remains: If we get one or
24 two more times of counseling, then would you be willing to
25 submit to the Court posttrial suggestions of giving --

1 allowing Mr. Clayton additional time rather than us having to
2 wait for a report and then do it -- request a show cause to
3 amend the parenting plan again. My goal and Mr. Clayton's
4 goal is to see his daughter as much as possible, and --
5 because of the Court's calendar, it is very full, they are
6 very -- they are definitely not underworked.

7 MR. ALBACK: I don't see a question here, Your
8 Honor. I see a --

9 THE COURT: Just please rephrase your question.

10 MR. RINDAL: Certainly.

11 BY MR. RINDAL:

12 Q. Ms. Macki --

13 THE COURT: What is her recommendation. Bottom
14 line, what is your recommendation.

15 THE WITNESS: Do I feel that it would be
16 difficult -- or be difficult for Grace to spend more time
17 with her father on his days off other than four hours. My
18 recommendation would be at this point that it would not be,
19 but I think that he needs -- my suggestion would be that he
20 contact the mother, making sure that it will not interfere
21 with any other plans that Grace already has.

22 Children at this age, if she has a birthday party,
23 that is a major thing for a child. Any of the -- to
24 accommodate any of her plans, plans that the family may
25 already have.

1 If it all coincides, then I think that it would
2 benefit her to spend time with her father.

3 MR. RINDAL: Great. Okay. Does that clarify,
4 Mr. Alback the question?

5 MR. ALBACK: There was a question in there, I
6 appreciate that very much. Thank you.

7 MR. RINDAL: Thank you.

8 BY MR. RINDAL:

9 Q. And my other question that I'd asked you is, upon
10 counseling, additional counseling between yourself, Grace and
11 Mr. Clayton, would you be willing to provide an additional
12 report to both attorneys so that we can attempt to modify, if
13 you so deem it acceptable, to add additional time rather than
14 forcing -- making us have to go back in front of the Court?

15 THE COURT: Well, Mr. Rindal, I believe that the
16 bottom line is that your client hasn't been paying for this
17 kind of counseling in the past. And you'll have to have some
18 plan in effect before your question can be answered, I
19 believe.

20 MR. RINDAL: You are right, Your Honor. I don't
21 think either party pays. I don't believe either party pays
22 at all.

23 I have nothing further. Thank you, Ms. Macki.

24 THE COURT: Thank you.

25 MR. ALBACK: I have no further questions, Your

1 Honor.

2 THE COURT: You are excused.

3 MR. ALBACK: Petitioner rests as well.

4 THE COURT: We will take a ten-minute break. We'll
5 be in recess for ten minutes.

6 (Recess.)

7 THE COURT: Court is in session. You may be
8 seated. Mr. Rindal, you may proceed.

9 MR. RINDAL: Thank you, Your Honor. I would like
10 to call Mr. Steve Clayton to the stand. Steve, would you
11 please go up and be sworn in by Carol.

12 STEVE CLAYTON,
13 called as a witness, and having been first duly sworn, was
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. RINDAL:

17 Q. Steve, would you please state your name for the
18 record?

19 A. Steven Lloyd Clayton.

20 Q. And you are the respondent in this matter?

21 A. Yes.

22 Q. You heard the jurisdictional testimony from your
23 wife, do you agree that this marriage is irretrievably
24 broken?

25 A. Yes.

1 Q. Okay. Is there any chance of reconciliation?

2 A. I wouldn't think so, no.

3 Q. Okay.

4 MR. RINDAL: Getting right into this, Your
5 Honor -- oh, Your Honor, for the matter, Mr. Alback and I
6 both agree that Mr. Frigaletti can -- Dr. Frigaletti
7 (phonetic) can come, sit and listen. I've taken him off the
8 witness list, he'd just like to sit in and listen for awhile.

9 May I approach the witness, Your Honor?

10 THE COURT: You may.

11 MR. RINDAL: Here is a bench copy, Your Honor.

12 BY MR. RINDAL:

13 Q. Steve, I have just handed you a document that has
14 been marked Respondent's Exhibit A. Do you recognize that
15 document?

16 A. Yes, I do.

17 Q. Okay. What is that exhibit?

18 A. This is our proposed division of assets and debts.

19 Q. Okay. I'm going to skip over the assets because
20 prior to the trial -- commencement of the trial, we have
21 stipulated with opposing counsel that we're going to use our
22 asset distribution. If there is any clerical error,
23 Mr. Alback and I will correct it, but this is the same
24 document that Mr. Alback and I presented with the pretrial
25 order.

1 The last page is page 3. Would you please turn
2 to that page.

3 A. Yes, I am there.

4 Q. Okay. I want to go down those one by one. Is it
5 your belief that the home mortgage owed against the house is
6 approximately \$72,000?

7 A. Yeah, approximately.

8 Q. Okay. And it is you and Mary Beth's intention
9 to -- excuse me, Ms. Clayton's intention to sell the house?

10 A. Yes.

11 Q. Okay. And I have listed two Chase credit cards,
12 one for approximately 255 and one approximately 1,091. You
13 have proposed that that debt be split between you and your
14 wife; is that correct?

15 A. Yes.

16 Q. Okay. And why do you believe that that splitting
17 the debt is equitable, 50/50?

18 A. Well, we both used the couch, we both ate the food.
19 Her revolver that she carries now is -- was bought with that.
20 I mean, we both, you know, accumulated this debt. I mean, I
21 couldn't go dollar for dollar what she spent and what I
22 spent, but...

23 Q. Could you please speak up.

24 A. Oh, sorry. It was -- I mean, it was close to 50/50
25 as I can -- I mean, we both ate the food and, I mean, that is

1 what we lived on for some of the time.

2 Q. Okay. She testified that she thought only
3 approximately 20 percent of the credit card debt was due to
4 food; is that your recollection?

5 A. No.

6 Q. What is your recollection?

7 A. I would say about 50 percent.

8 Q. Okay. And some of -- some of the items -- she
9 testified that the items from this debt, these two credit
10 cards, the Chase ones, are property that you are retaining;
11 is that accurate?

12 A. Well, there is some property that I'm retaining,
13 and I had mentioned the revolver, she is keeping that. And
14 also I had been paying on the credit card most of the time
15 that she had been separated from me, until around December.

16 Q. Okay. How much was the revolver, as an example?

17 A. I believe it was 327.

18 Q. Okay. We listed a First U.S. card, but I think
19 Ms. Clayton said that is called something else now, Bank One.
20 We didn't know the dollar amount, do you have any idea how
21 much that is?

22 A. I have no idea. The bank card companies won't let
23 me access any information. The only information I could get
24 was through Genus Credit, where I had changed the account
25 over to my name in June, late June after she had left. And

1 they couldn't -- they wouldn't release the information to
2 Genus.

3 Q. Ms. Clayton testified that she thought it was
4 something approximately \$2,491 on that credit card, First
5 U.S. card that we have listed. Do you have any reason to
6 believe that that is not correct?

7 A. No.

8 Q. So you believe that it is probably approximate?

9 A. Probably.

10 Q. Okay. And that is her credit card?

11 A. Right.

12 Q. Do you remember what the balance was on that credit
13 card while you were still together?

14 A. Probably about 3900, I think.

15 Q. Okay.

16 A. Close to 4,000.

17 Q. And you've paid down an amount before?

18 A. Right.

19 Q. Until December?

20 A. Right. \$213 a month.

21 Q. You paid \$213 a month since -- until December?

22 A. Right.

23 Q. And that is -- I think it was your wife's testimony
24 that she thought she was paying \$100 a month since December.

25 A. Right.

1 Q. Okay. We have a vehicle loan to Steve and Mary
2 Beth from your parents. It's listed at approximately
3 \$17,000. You heard Ms. Clayton's testimony that that is your
4 loan; is that your recollection?

5 A. No.

6 Q. Why do you have this separated, half and half?

7 A. Well, the reason is because we both benefited from
8 this.

9 Q. And how did you benefit from that loan?

10 A. Well, we -- after I had lost my position with
11 Express Trailer, I had to, you know, find another position,
12 wasn't finding one because of summer employment problems.
13 And then we lived off it until, I think she said, around
14 February or so, which we paid for the mortgage, food, you
15 know, gas, you know, just all living expenses. Purchased a
16 computer with that.

17 Because I was going to be attending school, I
18 needed a computer that was capable of connecting to the
19 Internet. And we purchased that. She used it for her grad
20 school work when she was going to educational grad school.
21 So...

22 Q. So she used some of the proceeds also --

23 A. Certainly.

24 Q. -- when she went to college?

25 A. Certainly.

1 Q. Okay. Does she have a degree?

2 A. Yes.

3 Q. What is her degree?

4 A. A degree in fine arts, bachelor's.

5 Q. Bachelor's degree. And you have a degree in
6 history?

7 A. History.

8 Q. Okay. Is that a bachelor's of science or bachelor
9 of arts?

10 A. Arts.

11 Q. Okay. So you both have the same educational degree
12 right now?

13 A. Right.

14 Q. And she -- you heard her testify she'll take her
15 student loan and you'll take your student loan; do you have
16 any objection to that?

17 A. No.

18 Q. Okay. She testified that she never made any
19 payments to your father on that -- what was originally a
20 \$19,000 loan; is that accurate?

21 A. No.

22 Q. Do you recall how many -- how much money that she
23 paid?

24 A. It was a total of \$2100.

25 Q. Okay. Have you still been making the payments?

1 A. No, I haven't been able to.

2 Q. Okay. How much do you make right now?

3 A. I make \$7.54 an hour. I work on an average of
4 32 hours a week. Best Buy, as a full-time employee, is 32
5 hours minimum. Since we are having kind of a company wide
6 budgetary problem, that is all I'm limited to right now.

7 Q. Okay. Do you believe that the Court should adopt
8 your proposed assets and debt distribution?

9 A. Yes.

10 Q. Do you think it is fair and equitable?

11 A. Yes.

12 MR. RINDAL: Your Honor, I'd move for admission of
13 Respondent's Exhibit A.

14 MR. ALBACK: I have no objection to this. I
15 thought it had already been filed with the Court. I have no
16 objection, Your Honor.

17 THE COURT: Respondent's A is admitted.

18 (Respondent's Exhibit A was admitted.)

19 MR. RINDAL: May I approach the witness, Your
20 Honor?

21 THE COURT: You may.

22 MR. RINDAL: Here is a bench copy, Your Honor.

23 BY MR. RINDAL:

24 Q. Steve, I have just handed you a document. Do you
25 recognize that?

1 A. Yes.

2 Q. It is marked Respondent's Exhibit B. What is that
3 document?

4 A. This is the proposed parenting plan of mine.

5 Q. Okay. In that parenting plan you have requested
6 additional time, specifically you would like to have a week
7 on, a week off, correct?

8 A. Right.

9 Q. Do you believe that Grace is substantially mature
10 enough to benefit from having a week on, a week off with you?

11 A. Certainly.

12 Q. Okay. And you have proposed that you alternate
13 the tax exemption between you and your wife?

14 A. Yes.

15 Q. Do you think that is fair?

16 A. Certainly.

17 Q. Okay. Are you and your wife now currently handling
18 transportation? I mean, is there any transportation issues
19 that have arisen?

20 A. I think only once my car broke down and she had to
21 come and pick up my daughter.

22 Q. But other than that?

23 A. Other than that, no.

24 Q. Okay. Now, you heard Ms. Macki testify that if
25 you apparently have one or two more counseling sessions,

1 you'll probably be allowed to spend more time with your
2 daughter. It appears that the Judge is not inclined and --
3 to grant half and half, and maybe at four years old that
4 might be too young.

5 In the alternative, would you at least like the
6 Judge to allow you the right of first refusal and to allow
7 you to have your days off in the middle of the week with your
8 daughter?

9 A. I mean, that's -- I see no problem with my daughter
10 spending time with me. But -- and I will -- I will accept
11 it. I mean, certainly I want more, but I will accept it.
12 And I'll go to counseling or whatever I have to do to make
13 sure my daughter is, you know, mentally fit.

14 Q. Right now is it -- is it approximately four full
15 days that you get to spend with your daughter per month?

16 A. Yes.

17 Q. Okay. And then to clarify, because I misspoke
18 earlier, you see her two times a week during the middle of
19 the week sometimes?

20 A. Yes.

21 Q. And what is that from?

22 A. While I was going to school, I had to change the
23 nights from Monday and Wednesday to Monday and Thursday
24 because I had a night course. So it's pretty much stuck
25 Monday and Wednesday. So I pick her up, I generally pick her

1 up about 3:15 on Mondays and also Thursdays. I get off of
2 work at about 2:30, so I go home and shower and go and pick
3 up my daughter.

4 Q. Okay. Now, you heard your wife testify that she
5 believes that you shouldn't spend extra time with your
6 daughter because it might be disruptive, and she did discuss
7 about your -- your work schedule. How far in advance does
8 your employer schedule your work?

9 A. The alternating weekends that is already set in,
10 they have a computer program that sets up the days off I
11 need. Also we have the ability to say, I need Tuesdays off
12 for the rest of my work career with you.

13 I can -- I am -- I am to the point where I am so
14 valuable on the company that they'd pretty much do anything
15 for me. The pay, you know, that is a different matter. But
16 with scheduling, they know what I'm going through, and you
17 know, they are worried about my daughter, so...

18 Q. Well, would -- I guess the question I was asking
19 you, how far in advance do they make the schedule?

20 A. My supervisor looks at it, it's usually about five
21 or six days.

22 Q. Okay. So nearly a week, five to six days?

23 A. Right.

24 Q. Do you believe you'll have the ability to request a
25 specific day such as a Tuesday or a Wednesday or Thursday?

1 A. I have never had a problem.

2 Q. Okay. And if that would assist in giving
3 stabilized time with your daughter, and at the request of
4 both your wife and Ms. Macki, are you willing to do that?

5 A. Yes.

6 Q. Okay. So if you are allowed to spend additional
7 time with your daughter, you're testifying here today you will
8 make a specific date schedule and that will stay in stone,
9 absent some emergency?

10 A. Oh, yeah, that wouldn't be a problem.

11 Q. Okay. Ms. Macki has indicated that you and your
12 wife both have a very healthy relationship with your
13 daughter, do you believe that that is correct?

14 A. For the most part.

15 Q. And she said -- Ms. Macki said that she believed
16 that you and your wife both have bonded -- or excuse me, your
17 daughter has bonded with both you and your wife; do you
18 believe that?

19 A. Certainly.

20 Q. Okay. Do you believe that it is in your daughter's
21 best interest to spend more time with you?

22 A. Yes.

23 Q. You have four full days a month. What do you
24 think -- I believe you said you want half time, one week on
25 and one week off?

1 A. Right.

2 Q. If that is not able to be done, what would you
3 request?

4 A. I mean, the bear minimum would be -- you know, if
5 I am -- if I have my day off and she is at work, there is no
6 reason that I wouldn't be able to see my daughter. I mean,
7 Alice seems to be a great person, you know, her sitter. But
8 I'm sorry to say, but the value of her relationship with
9 Alice and the relationship with me, I think I'm quite a bit a
10 head in the -- in the pecking order. I mean --

11 Q. And I believe your wife testified that it is her
12 belief that you only watch TV with your daughter, maybe
13 occasionally go for a walk or go to Wal-Mart; is that
14 accurate?

15 A. No.

16 Q. What do you do with your daughter when you spend
17 time with her?

18 A. Well, we -- it's kind of dangerous, but --
19 dangerous in the fact that it is white colored carpet, I
20 usually throw down a drop cloth in the family room and she
21 can finger paint, and I have given her a brush so she can
22 brush, we go picking flowers, we go for walks with the dog.
23 We will go to my work and visit my friends there.

24 I drive around, I'll go up north and I'll show her
25 different -- you know -- you know, obviously she is not going

1 to know the difference between an igneous and a sedimentary
2 rock, but, you know, I try to take her and have her get
3 actually interested in science and everything around her.

4 Q. Okay. Do you believe those are -- those are
5 important in educational --

6 A. Yes.

7 Q. -- visits with her -- please wait for me to finish
8 the question.

9 A. Sorry.

10 Q. I guess I have a question about a discussion with
11 your daughter. You heard Ms. Macki talk about she is a very
12 ab -- or excuse me, concrete thinker right now. Did you tell
13 your daughter you had to move?

14 A. No. Well, I told her -- she wanted to know what
15 all the boxes were for. And I said, well, I have to get a
16 new house here in town. And she goes, where Montana? I
17 said, yeah, Montana. And she thinks that my wife lives in
18 Montana and I live somewhere else. It's kind of -- and we're
19 only two miles apart.

20 Q. Okay.

21 A. So her whole ability to judge geographical
22 location, is skewed.

23 Q. Okay.

24 A. I had mentioned that my parents were going to be
25 coming up from California and she, I guess, somehow tied in

1 my parents and moving.

2 Q. Okay. Well, let's talk about your parents coming
3 to visit. You heard your wife testify that she has never,
4 and does not, restrict your visits with your daughter. Is
5 that accurate?

6 A. No.

7 Q. Can you give a very recent example?

8 A. Well, my daughter had a really high fever in March,
9 it was to the point where she had -- I mean, when I picked
10 her up from her sitter's, Alice Mills, she was ill, and I
11 took her to the hospital right away and they gave her Tylenol
12 and reduced the fever.

13 The next night was supposed to be my night that I
14 was supposed to have her. That night also was going to be my
15 scheduled -- scheduled night, and she said, well, because of
16 Gracie's health, I'm only allowing you one day this week.

17 Q. Have you taken care of her -- Grace when she is
18 sick?

19 A. Yes. Actually I exposed myself to chicken pox to
20 take care of her.

21 Q. Can you think of any good reason why your wife only
22 allowed you one weekend because of her being ill?

23 A. You know, I -- all I can surmise is spite.

24 Q. Okay. Was there something recent, such as on the
25 17th? Were you allowed to see your daughter on the 17th of

1 June?

2 A. The 17th of June was when I was scheduled to take
3 her to Dr. -- or Mary Macki. And she had requested -- Mary
4 Beth told me that I was to take her back to Alice's before
5 lunch time.

6 Q. Why?

7 A. She never gave me a reason.

8 Q. Your parents were here from California?

9 A. Right.

10 Q. And she wouldn't allow you to spend a few more
11 hours with her?

12 A. I guess not.

13 Q. Okay. Your wife testified that Grace needs a
14 routine to minimize some of the anxiety she has. Do you
15 have a routine when she stays with you?

16 A. Certainly.

17 Q. Okay. And you've maintained that ever since you
18 separated?

19 A. She goes to bed at the same time, she doesn't stay
20 up until ten o'clock, like I have been told that she does
21 over at Mary Beth's house. And she goes to bed at 8:30. She
22 knows she is supposed to brush her teeth before she goes to
23 bed. At one o'clock in the afternoon, she goes and takes her
24 nap.

25 Q. Okay. So your respondent's proposed final

1 parenting plan and your belief provides for the best
2 needs of your daughter?

3 A. She needs her father in her life as much as she
4 does her mother.

5 Q. Okay.

6 MR. RINDAL: Your Honor, I'd request that
7 Respondent's Exhibit B be admitted.

8 MR. ALBACK: I have no objection, Your Honor.

9 THE COURT: B is admitted.

10 (Respondent's Exhibit B was admitted.)

11 MR. RINDAL: May I approach the witness, Your
12 Honor?

13 THE COURT: You may.

14 MR. RINDAL: Thank you.

15 MR. ALBACK: Your Honor, if I might interrupt. It
16 appears that Mr. Rindal is going to be asking that these
17 documents be admitted as his child support calculations. To
18 save the time and trouble of the foundational matters, I'm
19 certainly willing to stipulate to the entry of these
20 documents.

21 MR. RINDAL: Thank you, Mr. Alback.

22 BY MR. RINDAL:

23 Q. Steve, I'm handing to you what has been marked as
24 Respondent's Exhibit C.

25 MR. RINDAL: Your Honor, here is bench copy.

1 BY MR. RINDAL:

2 Q. Do you recognize that document, Steve?

3 A. Yes, I do.

4 Q. Okay. What is that?

5 A. This is -- it appears to be the child support
6 calculations.

7 Q. Okay. Now, I believe we put down that your wife
8 makes approximately \$23,000. I don't remember the exact
9 dollar amount, but I believe that was information provided by
10 Mr. Alback. We have you down as 12,547 annually; is that
11 12,547 what you make annually?

12 A. Approximately, yes.

13 Q. Okay. Now, this shows that you have earned income
14 credit of 2,547. We have requested that the Judge alternate
15 the tax deduction between you and your wife. This
16 calculation is based on 110 days visitation, the standard
17 visitation is 110 days a year. Certainly you are not getting
18 that many, but 110 -- anything more than 110 will change the
19 calculations. This is at 110.

20 We have allocated \$2,600 for daycare costs. I
21 didn't have that dollar amount until today. I think that is
22 even high, so --

23 MR. RINDAL: Am I right?

24 MR. ALBACK: Your Honor, I'd also stipulate to the
25 amounts in these documents as well. We have discussed the

1 income, the child support -- I mean the daycare costs and so
2 on, so forth. Rather than belabor that before the Court, I'd
3 be willing to stipulate as to the figures as well.

4 MR. RINDAL: Your Honor, then I --

5 THE COURT: Respondent's C is admitted.

6 MR. RINDAL: Thank you, Your Honor.

7 (Respondent's Exhibit C was admitted.)

8 MR. RINDAL: May I approach the witness again, Your
9 Honor?

10 THE COURT: You may.

11 MR. RINDAL: Bench copy, Your Honor.

12 BY MR. RINDAL:

13 Q. Steve, we're going to cut to the chase to save time
14 here. This is a document marked as Respondent's Exhibit D.
15 Do you recognize it?

16 A. Yes.

17 Q. This shows the same financial amount, 23,000 income
18 for your wife, 12,547 for yourself, but it shows her earned
19 income credit. This shows that she claims Grace for the
20 child -- for the income tax deduction, and it has the same
21 amount of daycare costs, \$2600.

22 MR. RINDAL: Your Honor, I'll just move to admit.

23 THE COURT: Is there any objection?

24 MR. ALBACK: I'm sorry, Judge, no, I thought I
25 stipulated.

1 THE COURT: Okay. D is admitted.
 2 (Respondent's Exhibit D was admitted.)
 3 MR. RINDAL: Thank you, Your Honor. And, Your
 4 Honor, just a clarification, since we have requested that the
 5 child tax return deduction be alternated, I provided both to
 6 show you the differences.
 7 THE COURT: Thank you.
 8 BY MR. RINDAL:
 9 Q. Steve, Mrs. Clayton testified about the last
 10 several years you haven't made much income. Would you agree
 11 that that is a fair assessment?
 12 A. Well, being a student doesn't usually pay too well.
 13 Q. How long have you been in college?
 14 A. On and off, I was in school for about 12 years;
 15 full-time, probably about four years.
 16 Q. Well, she was talking at least since 1998, that is
 17 when she started discussing your income. Did you start
 18 full-time or on a complete college degree in about 1998?
 19 A. Actually a year earlier than that --
 20 Q. Okay.
 21 A. -- I was attending full-time as an education
 22 student at Eastern at the time, and then Grace was born with
 23 her laryngomalacia, so I could no longer go through with that
 24 degree, so I stayed home.
 25 Q. Would you clarify for me, you said Grace was born,

1 and then you said some big word I didn't hear.
 2 A. Laryngomalacia, which was a -- it's a -- she had an
 3 immature epiglottis, which restricted her breathing. Any
 4 sort of cold or flu could become very serious and she could
 5 become hospitalized.
 6 Q. And did you and your wife take care of Grace at
 7 that time?
 8 A. I took care of her for, oh, I'd say two months
 9 until the doctor felt that it was okay for her to go into
 10 daycare.
 11 Q. Okay. Your wife has a college degree too, when did
 12 she start college, approximately?
 13 A. I think she graduated in '92 from high school
 14 and -- actually, let me see. Okay. She was 17 when she
 15 started college. She is 29 now. So 12 years ago.
 16 Q. Did she graduate from college before you married
 17 her?
 18 A. Yes.
 19 Q. Okay. And so I believe -- when did you get married
 20 again?
 21 A. December 30th, 1995.
 22 Q. Okay. So in 1995 she already had her college
 23 degree?
 24 A. Yes.
 25 Q. And is it fair to say that she has worked since

1 then until -- well, she is still working, right?
 2 A. Right.
 3 Q. Okay. And because of her either training or
 4 college degree she had better paying jobs than you?
 5 A. Yes.
 6 Q. And since 1997 you've been a full-time college
 7 student; is that correct?
 8 A. No, I can't say that. I haven't been -- the whole
 9 time I haven't gone full time. When I had some part-time
 10 positions, I also went to school part-time. But for the
 11 majority of the time later in our marriage, I was at school
 12 full time.
 13 Q. Okay. During the last several years, let's say
 14 since 1997 or '8, have you -- has your father been assisting
 15 you and Mary Beth with financials?
 16 A. Yes, thankfully.
 17 Q. Okay. Can you -- do you have any idea about how
 18 much your father has given you and Mary Beth?
 19 A. I have looked at the records, and I would say it's
 20 probably between ten and \$15,000 per year. And I don't even
 21 think that is including school, because I wasn't taking on
 22 student loans.
 23 Q. Okay. And did this money that your father gave to
 24 you and Mary Beth, did it benefit both you?
 25 A. Yes.

1 Q. It didn't go into just one of your secret accounts
 2 or anything, did it?
 3 A. No, I don't have any secret accounts.
 4 Q. What did you use all the money for?
 5 A. Rent. Actually the \$500 deductible when Grace was
 6 born. School. Let me see. You know, just living expenses.
 7 Mortgage, of course.
 8 MR. RINDAL: May I approach the witness, Your
 9 Honor?
 10 THE COURT: You may.
 11 MR. RINDAL: Your Honor, here is a bench copy.
 12 BY MR. RINDAL:
 13 Q. In fact, did your father help you buy a house?
 14 A. Yes.
 15 Q. I have handed you a document that is marked as
 16 Respondent's E. Do you recognize that?
 17 A. Yes, I do.
 18 Q. What is that document?
 19 A. This is a gift letter that my dad had to present to
 20 the Internal Revenue Service showing that it was a gift to me
 21 in the amount of \$20,000 so I could purchase a home.
 22 Q. Okay. And did this money go straight to the
 23 purchase of the house that you and Mary Beth currently own?
 24 A. Yes. Actually the cashier's check was made out to
 25 the bank.

1 Q. So you never actually touched this money, it
2 went --

3 A. No, I never got to see it.

4 Q. And it is on your behalf, he listed my son Steven
5 Clayton, that is you, correct?

6 A. Right.

7 Q. Okay.

8 MR. RINDAL: Your Honor, I'd move for the admission
9 of Respondent's Exhibit E.

10 MR. ALBACK: I object, there is no foundation for
11 this document, Your Honor, at all.

12 THE COURT: It proves your case. Respondent's E is
13 admitted.

14 (Respondent's Exhibit E was admitted.)

15 MR. RINDAL: May I approach the witness, Your
16 Honor.

17 THE COURT: You may.

18 MR. RINDAL: Here is a bench copy.

19 Your Honor, if I may have permission, I am not
20 going to submit this for -- to be accepted under this
21 witness, but just because of the course, I am -- my witness
22 who actually owns this document is waiting in the hall to
23 testify to it. I will, if Mr. Alback would permit me to ask
24 just a few questions, I have got like two questions on it,
25 and then all the foundation and all the actual accuracy will

1 be upon Mr. Art Clayton, who is in the hall.

2 Otherwise, I'll just have to call Mr. Steve Clayton
3 back to the stand after this.

4 THE COURT: I am not quite sure what you are
5 intending to do with this.

6 MR. RINDAL: Your Honor, I'll just wait.

7 Mr. Clayton, may I have that back, please. Thank you. May I
8 have those other documents.

9 THE WITNESS: Sure.

10 MR. RINDAL: I'll wait Your Honor.

11 BY MR. RINDAL:

12 Q. Steve, I believe you testified that you had got a
13 loan, you got a loan from your father, you and Mary Beth
14 needed a reliable vehicle, is that why you got the loan?

15 A. We purchased a vehicle through Fichtner Chevrolet,
16 and the money was loaned to us by my father.

17 Q. Okay. Well, let's talk about that for a minute.
18 You say we purchased a vehicle through Fichtner's, that
19 contradicts what Ms. Clayton said. She said she had nothing
20 to do with that.

21 A. Mm-hmm.

22 Q. Is that accurate?

23 A. No.

24 Q. Well, what did you do? You went to -- what are you
25 contending happened?

1 A. Well, it almost sounds like she had no -- she had
2 no idea that it was being done. And the funny thing is, is
3 we went down together and picked out the options. We talked
4 to the sales manager, and since my dad is a General Motors
5 employee, we had to go through the sales manager. So we sat
6 down there and picked out the options together. We picked
7 out the color, we picked out the fabric, we picked out
8 everything.

9 And we had had trouble with the vehicle that we
10 owned before, I had an older Taurus and so I wanted to get
11 something more reliable. And also I -- I mean, it was -- it
12 was us.

13 Q. And so is it your contention that your wife
14 assisted you in purchasing or picking out the pickup?

15 A. Yes.

16 Q. For your family?

17 A. And we got the extra cab because she wanted the
18 extra cab, because when we are going to have kids, you know,
19 we wanted to have, you know, room in the back.

20 Q. Okay. And then you purchased the vehicle; is that
21 correct?

22 A. Yes. Yes.

23 Q. Where is that vehicle now?

24 A. I have seen it drive around town.

25 Q. No, let me clarify. Do you still own it?

1 A. No.

2 Q. Okay. What did you and Mary Beth do with it?

3 A. We sold it.

4 Q. Why?

5 A. Because I had lost my position with Express
6 Trailer, we needed money to live on. I didn't know how
7 long it was going to be until I could find another position.
8 So we bought a fairly -- fairly new Oldsmobile Achieva, and
9 so we had a reliable piece of transportation, also got cash
10 from that downgrading.

11 Q. Do you recall approximately how much cash that you
12 and Mary Beth received?

13 A. It was around \$11,000.

14 Q. And did that \$11,000 go into your joint marital
15 account?

16 A. Yes. We had no other accounts except for our joint
17 account.

18 Q. And what did you and Mary Beth do with that
19 \$11,000?

20 A. Lived off of it, purchased a computer. That is
21 pretty much it, we lived off of it.

22 Q. Okay. So is it your contention that that is a
23 joint marital debt that you owe your father?

24 A. Yes.

25 Q. And do you have an approximate idea how much that

1 was worth -- or the debt?

2 A. The debt is calculated around \$17,400.

3 Q. That is right. And that was already included in
4 one of those documents.

5 MR. RINDAL: Your Honor, may I approach the
6 witness?

7 THE COURT: You may.

8 MR. RINDAL: Thank you. Here is a bench copy, Your
9 Honor.

10 Your Honor, I apologize for having these out of
11 order, but I've just handed the document, Respondent's
12 Exhibit G, to the -- to Steve Clayton.

13 BY MR. RINDAL:

14 Q. Steve, do you recognize this document?

15 A. Yes, I do.

16 Q. This is our proposed findings of fact and
17 conclusions of law. Have you reviewed this document?

18 A. Yes, I have.

19 Q. Do you believe it accurately reflects your
20 contentions of what the facts are --

21 A. Yes.

22 Q. -- in this case? And does it accurately reflect
23 what you believe the conclusions of law to be?

24 A. Yes.

25 MR. RINDAL: Okay. Your Honor, I'd move for

1 admission, demonstrative purposes only, Respondent's
2 Exhibit G.

3 THE COURT: Well, all of your exhibits are
4 demonstrative purposes only, I believe.

5 MR. RINDAL: Certainly, Your Honor.

6 THE COURT: Is there any objection?

7 MR. ALBACK: No, I have no objection to these, Your
8 Honor.

9 THE COURT: I'd point out, though, I think they
10 were due about three days ago.

11 MR. RINDAL: Your Honor, Mr. Alback and I had a
12 problem in getting -- hooking up the right time and getting
13 all the information exchanged.

14 (Respondent's Exhibit G was admitted.)

15 MR. RINDAL: Your Honor, that concludes my
16 questions for Mr. Clayton.

17 MR. ALBACK: I have a couple.

18 CROSS-EXAMINATION

19 BY MR. ALBACK:

20 Q. Mr. Clayton, how old are you?

21 A. Thirty-six.

22 Q. All right. You are 36 years old. You testified
23 that you have gone to school for 12 years?

24 A. On and off, yes.

25 Q. All right. And so I take it that part of that

1 time that you were going to school, you were going part-time?

2 A. Yes.

3 Q. All right. But your testimony also is that part of
4 that time you were going full-time?

5 A. Yes.

6 Q. And pretty much since '98, the bulk of that time
7 has been spent going to school full-time, right?

8 A. Yes.

9 Q. How many degrees do you have?

10 A. I am close to two other degrees, but I have the
11 one.

12 Q. Okay.

13 A. In history.

14 Q. And the one that you have is in history. What
15 other degrees are you close to having?

16 A. Business and marketing.

17 Q. Okay. Did you change majors from time to time?

18 A. Yes. Yes, I did.

19 Q. Are you in school now?

20 A. I am taking a sabbatical, as you would say.

21 Q. Okay.

22 A. I can't afford to go to school right now.

23 Q. Okay. So when did you last go to school?

24 A. In -- the last semester, which was from January
25 to May.

1 Q. And were those graduate hours?

2 A. Yes.

3 Q. In history?

4 A. No, actually in public relations.

5 Q. Okay. So you have almost a marketing, almost a
6 business, you have a history, and now you are taking graduate
7 courses in public relations?

8 A. Yes.

9 Q. Okay. And during that period of time that you have
10 been going to school, your father has been giving you,
11 according to your testimony, anywhere from ten to \$15,000 a
12 per year; is that correct?

13 A. Right. And when --

14 Q. Okay.

15 A. -- I wasn't working, yes.

16 Q. Okay. And also it is your testimony that during
17 that period of time your father gave you \$20,000 to buy a
18 house?

19 A. Yes.

20 Q. All right. And it's also your testimony that
21 during that period of time your father gave you \$18,000 --
22 \$19,000 -- over \$19,000 to buy a pickup?

23 MR. RINDAL: Objection, Your Honor. I don't
24 believe he testified that he gave him. I believe my client
25 testified that it was a loan.

1 MR. ALBACK: I'll restate it.

2 BY MR. ALBACK:

3 Q. During that period of time your father, who I
4 assume got tired of giving you money said, I'm going to
5 loan you \$19,500, right?

6 A. Yes.

7 Q. Okay. But he didn't make a loan to you, did he? I
8 mean, he didn't get a note from you, did he?

9 A. It was assumed that I would be paying it back.

10 Q. Okay. All right. Because you and Mary Beth,
11 according to your testimony, went down and bought yourself a
12 fancy-dancy pickup, right?

13 A. Yes.

14 Q. Okay. Have you brought forth any of your documents
15 from that purchase that reflects that Mary Beth participated
16 in that loan or in that purchase at all?

17 A. Yes. Well --

18 Q. You have?

19 A. Yes. Actually I have checks written to my father
20 stating it is a payment of a loan of the truck.

21 Q. That is not what I asked you, sir. Did you bring
22 any documents to this court that reflect that Mary Beth
23 purchased that vehicle from Fichtner's Chevrolet?

24 A. Documents on -- well, I don't remember them
25 providing any documents for myself.

1 Q. You didn't sign anything to evidence the purchase?

2 A. No, because there was no loan. So it was -- it was
3 a direct purchase through General Motors program.

4 Q. Did you title the vehicle?

5 A. Yes.

6 Q. You titled it in your name, didn't you?

7 A. Yes.

8 Q. Okay. Didn't title it in Mary Beth, did you?

9 A. No, I couldn't.

10 Q. Okay. Didn't get a note, she's not on the title,
11 you've brought forth no documents that she was part of the
12 deal, but yet your contention is, is that she owes your dad
13 half of \$17,400?

14 A. Yes, it is.

15 Q. All right. The same dad who has given you,
16 according to my quick math, \$80,000 over the last eight, ten
17 years, at least?

18 A. Probably, yes.

19 Q. Okay. The truth of the matter is that if the money
20 that you contend has to be paid back to your dad, you are
21 going to end up with it anyway?

22 A. No. The money that I am -- that I'm to be paying
23 back my dad, I'm going to get it anyway?

24 Q. Yeah.

25 A. No, certainly not.

1 Q. Your dad finally shut off the spigot?

2 A. Well, not completely, no.

3 Q. Okay.

4 A. But he has to buy a new car.

5 Q. Oh, all right. So he'll just get some of it
6 back -- or you'll just get some of it back?

7 A. No, I won't get any -- well, I won't get any of
8 this money back. This is --

9 Q. All right. In regard to the money that your father
10 has furnished to you over the years, first of all, you say
11 that the money that was realized after you sold the pickup,
12 right? You said you bought an Achieva?

13 A. Right.

14 Q. How much did you pay for the Achieva?

15 A. I think eleven, seven, 11,700.

16 Q. And you testified after that there was roughly
17 \$11,000 or so that remained, right?

18 A. Yes.

19 Q. And you testified that that money was used
20 basically for living expenses?

21 A. Yes.

22 Q. For the two of you?

23 A. Yes.

24 Q. All right. You also testified that in regard to
25 the ten to \$15,000 a year that your father gave to you, that

1 that money was used for living expenses?

2 A. Yes.

3 Q. All right.

4 MR. RINDAL: Your Honor, I'm not sure if there has
5 been a question in the last five minutes.

6 MR. ALBACK: I just asked him a question.

7 THE COURT: This is cross-examination.

8 MR. RINDAL: He's just restating.

9 BY MR. ALBACK:

10 Q. Did you testify that you used that money for living
11 expenses?

12 A. Yes, I did.

13 Q. All right. And did you testify that you used the
14 money that was left over from the sale of the pickup --

15 A. Yes.

16 Q. -- for living expenses?

17 A. Yes.

18 Q. Okay. And during that period of time you were
19 making a little bit of money, 2,000 or so a year, right?

20 A. Something like that, on average.

21 Q. Okay. And during that period of time Mary Beth was
22 making eighteen to \$22,000 a year; would you agree with that?

23 A. Yes.

24 Q. Okay. So as I add it all up, you and Mary Beth
25 were living on roughly \$50,000 a year?

1 A. Possibly.
 2 Q. And you still had to get money from your dad?
 3 A. Yes.
 4 Q. Okay. And isn't the truth of the matter that the
 5 money that came from the sale of the pickup and the money
 6 that came from your dad just gratis, was basically used to
 7 buy all the toys that ended up on your disclosure statement
 8 that we have agreed to that you have?
 9 A. No. What toys are you referring to?
 10 Q. Well, as I look at the disclosure statement that
 11 you have submitted to the Court for your division, there is
 12 at least five firearms that have been purchased during the
 13 course of the marriage that are on your side of the ledger
 14 that Mary Beth has agreed to.
 15 A. Actually I believe my original proposal was her to
 16 get -- or she has three firearms, actually, of those five.
 17 Q. Mr. -- I'm not asking you, I'm asking you if there
 18 were five firearms that were purchased during the course of
 19 the marriage that you're ending up with?
 20 A. I believe so.
 21 Q. Okay. And you end up with the Achieva?
 22 A. What is left of it, yes.
 23 Q. Ah, okay. And let's speak about that.
 24 A. Okay.
 25 Q. You say in the documents that you provided the

1 A. Yes.
 2 Q. I mean to those assets?
 3 A. Yes.
 4 Q. All right. And those assets and their values are
 5 what is before the Court now as the agreed upon division?
 6 A. Yes.
 7 Q. Okay. And so if the assets that are on your side
 8 of that ledger totals \$10,616, and those that are on Mary
 9 Beth's total \$2,200, would you agree that that is a result
 10 of calculations or of values that you have placed on those?
 11 A. Certainly I'm not a professional appraiser, but,
 12 yes, I guess I would -- I would -- you know, from my
 13 abilities, which aren't great, yes.
 14 Q. Well, based upon that, would you agree that the
 15 value of the assets that you're retaining of a personal
 16 property nature are five times greater than the value of what
 17 Mary Beth is getting?
 18 A. Well, I certainly think we should also say that a
 19 lot of those were premarital.
 20 Q. The premarital aren't included in the calculations,
 21 sir.
 22 A. The firearms? There are certainly firearms listed
 23 on there that are premarital.
 24 MR. ALBACK: What is the hearing number?
 25 MR. RINDAL: A I think.

1 Judge today that that Achieva is worth \$1500?
 2 A. Yes.
 3 Q. Is that right? But the documents that you have
 4 furnished for your initial disclosure, or declaration of
 5 disclosure had a value of \$3,000?
 6 A. Yes.
 7 Q. And isn't it the truth of the matter that since the
 8 day you bought the Achieva, it has been your vehicle?
 9 A. No.
 10 Q. Is Mary Beth's name on that title?
 11 A. No.
 12 Q. Has it ever been?
 13 A. No.
 14 Q. Okay. Would you agree that the values that
 15 are placed on the property that is included on the
 16 declaration of -- I'm sorry, the agreed division of personal
 17 property are values that you established?
 18 A. Now, which -- which -- which -- are you talking
 19 about the one I submitted?
 20 Q. Yes. The truth of the matter, isn't it -- I'll
 21 help you.
 22 A. Okay.
 23 Q. Isn't it the truth of the matter that you furnished
 24 a listing of all of your assets to Mr. Rindal and had values
 25 assigned to those documents?

1 MR. ALBACK: Excuse me?
 2 MR. RINDAL: I believe it's A.
 3 MR. ALBACK: May I approach, Your Honor?
 4 THE COURT: You may.
 5 MR. ALBACK: All right.
 6 BY MR. ALBACK:
 7 Q. I'm showing what has been marked as Exhibit A.
 8 Those items that are listed as premarital --
 9 A. Yes.
 10 Q. -- have no value, do they, in --
 11 A. No.
 12 Q. All right.
 13 A. Sorry.
 14 Q. Okay.
 15 A. So many documents.
 16 Q. Okay. So little time. The ten to 15,000 that your
 17 dad gave you per year, did he do a gift statement for those
 18 for tax purposes too?
 19 A. No.
 20 Q. Do you know why not?
 21 A. I have no idea. I really don't.
 22 Q. Okay. All right. I just have a few more questions
 23 to ask you. I want to talk to you about the parenting plan
 24 just a little bit. All right?
 25 I believe your position originally with what has

1 been filed, is that you want every other weekend, right? I
2 mean, I'm sorry, every other week with your daughter?

3 A. Yes.

4 Q. But as I understand your testimony, are you backing
5 off that position?

6 A. Well, I am trying to do what is best for my
7 daughter. And I think -- you know, I'm trying to follow an
8 expert's advice. The expert is contending that if I am able
9 to go to the therapist with my daughter, then I should be
10 granted more time with my daughter. What I'm trying to be is
11 realistic.

12 Q. Okay.

13 A. I mean, at this period of time, I most likely don't
14 have a chance --

15 Q. So you have backed off?

16 A. Assume -- yes.

17 Q. Okay. And as I understand that the reason that you
18 want the additional time with your daughter that Mr. Rindal
19 has been batting around all day about your days off, right,
20 is because you want to spend time with your daughter?

21 A. Yes.

22 Q. And her time is better spent with you than with
23 Alice the baby-sitter; is that right?

24 A. Most definitely.

25 Q. Okay. I just have a question that I can't resolve;

1 and that is, what about the three and a half years when your
2 daughter was going to the baby-sitter everyday when you were
3 home, when you weren't in school? You never went to get here
4 then? You never insisted on having daycare with her in your
5 presence then, did you?

6 A. Well, actually I think we discussed this in the
7 first trial. The first summer I had to spend out in the
8 front yard doing landscaping. Also I had various hours with
9 my work schedule and school schedules.

10 Q. Okay.

11 A. And we're supposed to have consistency in my
12 daughter's life.

13 Q. Okay. And so I take it that then it was more
14 important that the consistency include Alice, right?

15 A. At the time, I don't think -- between the ages of
16 three and six are the most developmental important years of a
17 child's life. You know, without her -- I am now, between the
18 ages of three and six, able to be there for her.

19 Q. You are going to school now, are you, part-time?

20 A. As I stated before, I can't afford to go to school
21 right now.

22 Q. But as soon as you can afford it, are you planning
23 to?

24 A. It would most likely be a distance program where I
25 would stay home.

1 Q. Okay. And so that would be some quality time with
2 you and Grace while you were doing your distance schooling on
3 the computer?

4 A. Well, actually I would only -- I would only take it
5 as many classes that I can handle so my daughter is coming
6 first. I mean, my work knows that, I have told them that my
7 daughter is the most important thing in my life.

8 Q. Okay. Fair enough. Fair enough. I just have like
9 two more questions. Mr. Rindal asked you about times when
10 Mary Beth has withheld visitation from you.

11 A. Yes.

12 Q. Right? And the only example that you could give of
13 that was --

14 A. Actually he told me the most recent example is what
15 he asked me.

16 Q. And so your example was, is the day that -- when
17 your --

18 A. That my daughter --

19 Q. If you might -- I will ask the questions and then
20 when I'm done, you can answer. All right? Okay?

21 A. (No response.)

22 Q. The example you gave was one occasion when, under
23 your own testimony, you picked your daughter up and she had,
24 in your words, a high fever.

25 A. Yes.

1 Q. And your visitation, it was in March?

2 A. I am trying -- yes, it was in March.

3 Q. March would be wintertime, I'm guessing? Probably
4 not a warm day.

5 A. Probably not.

6 Q. Okay. And are you, seriously, complaining that
7 Mary Beth didn't bring your daughter out in the cold with a
8 high fever the next day so that you could spend your four
9 hours with her?

10 A. Actually the next day she didn't have a fever. It
11 was the night before that she was ill, and I was able to take
12 care of her that next day.

13 Q. Okay.

14 MR. ALBACK: I have nothing further, Judge.

15 REDIRECT EXAMINATION

16 BY MR. RINDAL:

17 Q. Steve, Mr. Alback was, I guess, trying to show that
18 you, out of all these complaints you had, you could only
19 think of two times. If we had an hour to -- how many times
20 do you think that she has withheld or restricted your
21 visitation with Grace since last September?

22 A. Actually I have a calendar of such events.

23 Q. Can you estimate how many times? Don't go into the
24 details, please.

25 A. I would say eight times.

1 Q. Okay. And, in fact, hasn't there been times when
2 you were able to take care of her, and was there an incident
3 where --

4 MR. ALBACK: I object as to leading, Your Honor.

5 MR. RINDAL: Sure.

6 BY MR. RINDAL:

7 Q. Is there an incident that you'd like to tell
8 recently about, she was supposed to take her to work?

9 A. Yes. Well, the incident began with my -- my
10 daughter was again sick, I think it --

11 THE COURT: I think this is beyond the scope of the
12 cross-examination.

13 MR. RINDAL: Your Honor, he was talking about the
14 illness and this is --

15 THE COURT: You are going beyond the scope of the
16 cross-examination and I'm going to prohibit any further
17 questions.

18 MR. RINDAL: Well, since you are prohibiting any
19 further questions, I have nothing further, Your Honor.

20 THE COURT: On this subject.

21 MR. ALBACK: I have nothing further, Judge.

22 THE COURT: You may step down. Do you have another
23 witness?

24 MR. RINDAL: I do, Your Honor. I would like to
25 call Mr. Art Clayton.

1 ARTHUR W. CLAYTON,
2 called as a witness, and having been first duly sworn, was
3 examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. RINDAL:

6 Q. Mr. Clayton, would you please state your full name
7 for the record?

8 A. Arthur W. Clayton.

9 Q. And are you the father of Steve Clayton?

10 A. Yes, I am.

11 Q. And what is your address?

12 A. 684 Catalina Road, Fullerton, California, 92825.

13 Q. Okay. Okay. That is fine. I want to ask you a
14 few short questions. One regarding --

15 MR. RINDAL: May I approach the witness, Your
16 Honor?

17 THE COURT: You may.

18 MR. RINDAL: I handed him exhibit Exhibit F, that
19 one there. Toby, F.

20 MR. ALBACK: Gotch you, thank you.

21 BY MR. RINDAL:

22 Q. Mr. Clayton, I handed you a document marked
23 Respondent's Exhibit F. Do you recognize that document?

24 A. Yes, sir, I do.

25 Q. Now, there is some blackouts, I have -- I, myself

1 have blacked out certain numbers that show account balances.

2 You have the original, or you provided a copy of this without
3 the blackouts to me; is that correct?

4 A. Yes, sir.

5 Q. Is this the same document that you handed me
6 without the blackouts?

7 A. Yes, it is.

8 Q. Okay. I want to direct your attention to, at the
9 bottom, where it says, Check to Fichtner Chevrolet,
10 \$19,543.36?

11 A. Yes.

12 Q. Was that a loan to Mary Beth and Steve Clayton?

13 A. Yes, it was.

14 Q. And why did you give them that loan?

15 A. Well, I was an employee of General Motors and I get
16 a discount on cars. When my son decided -- and Mary Beth
17 decided that they wanted a new car because her truck was
18 getting rather old, they decided to purchase a new car, and
19 used my discount, as my son he could do that.

20 They went and applied at the this dealership and
21 when they went to purchase the car, the interest would have
22 been 18 percent, with a cosigner 25 percent. So I told them
23 that I would loan them the money through my bank, because I
24 could get a mortgage -- well, I had an outstanding line of
25 credit with my credit union. So I just had them write a

1 check and -- because I felt that was an outrageous price to
2 add to the cost of the vehicle they were buying.

3 Q. Okay.

4 A. With the premise that they would be paying me back.

5 Q. Okay. And, in fact, have they made payments back
6 to you?

7 A. They were making payments on a regular basis for a
8 number of months until the job situations changed, their
9 financial costs changed, and then it became difficult for
10 them to do so. And, therefore, in my typical permissive
11 parent supporting fuss style, I let it slide.

12 Q. Okay.

13 A. But I never forgave it.

14 Q. Sure. Now, is that an accurate number,
15 \$19,543 --

16 A. Yes, it is.

17 Q. Okay. You have to wait for me to finish the
18 question. I know --

19 A. Okay.

20 Q. -- a lot of people get nervous and answer before
21 the question is done.

22 MR. RINDAL: Your Honor, I'd move for admission of
23 Respondent's Exhibit F.

24 MR. ALBACK: I have no objection, Your Honor.

25 THE COURT: F is admitted.

(Respondent's Exhibit F was admitted.)

MR. RINDAL: May I approach the witness, Your Honor?

THE COURT: You may.

MR. RINDAL: Here is a bench copy.

BY MR. RINDAL:

Q. Mr. Clayton, I have handed you a document marked Respondent's Exhibit H. Do you recognize this document?

A. Yes, I do.

Q. Is this in fact the information, the spread sheet that you have provided to my office to make copies for the Court today?

A. Yes, it is.

Q. What do some of these numbers represent?

A. These reflect the checks that I issued to Steven and Mary Beth to help support them while Steve was going to school.

Q. Okay. Do you recall when they were married?

A. I want to say December 30th, '98.

Q. Okay. I believe it was 1995.

A. '95, excuse me.

Q. But this document starts at 1996. Do you --

A. Well, they were married on December 30, '95; is that correct?

Q. I don't personally remember the date. Yes, I guess

that is correct.

A. Yes.

Q. So December 30th of 1995 is their marriage, and within -- well, within two weeks I see you started giving them gifts of \$1,000?

A. Yes, sir.

Q. Why did you keep track of this money that you provided to them?

A. Well, I have three children.

Q. Mm-hmm.

A. And my intention is to try to treat my three children equitably. They require different types of financial support, or I have been in the position to provide them different types of financial support --

MR. ALBACK: Your Honor, I am going to object to this testimony, and also object to this document for the following reasons: The only allegation that is before this Court is that somehow my client might owe Mr. Clayton half of the amount of the car -- the pickup loan. And I take it they're alleging that she owes part of the \$20,000 down payment.

All of this other stuff is extraneous to this witness's testimony, and it is not -- it is a waste of time at this point.

THE COURT: I'm going to overrule the objection.

I am -- as I warned everybody before, I'm well aware of the Statute of Frauds in this matter.

MR. ALBACK: Okay, Your Honor.

BY MR. RINDAL:

Q. Mr. Clayton, as we were talking about, it's apparently that you have been very generous to your son and daughter-in-law; is that fair?

A. Yes.

Q. Okay. This money that you gave to Steve and to Mary Beth, all the ones in these first columns, unless otherwise designated, those are just gifts that you are trying to be a helpful father and father-in-law?

A. That's correct.

Q. Okay. There are a couple -- a couple specific items, though, I do want to save time to direct your attention to. On the first page it says on 10-22-97, where it says, Credit union loan to Steve and Mary Beth for their pickup.

Did you ever tell Steve or Mary Beth that that was a gift to them?

A. No, sir.

Q. Okay. And I believe you earlier testified that they have made payments to you?

A. Yes.

Q. Is it from your recollection that Mary Beth has

actually made payments also to you, not just Steve?

A. I believe she wrote the checks.

Q. Okay. And has she ever told you to this date that she didn't owe you the money or that there was no loan?

A. No.

Q. Did she acknowledge the loan to you?

A. Yes.

Q. Okay. You also gave a down payment on 5-14-98, that letter has been admitted, I don't recall the exhibit.

But it was the gift letter that you provided to me, that you gave to Steve a \$20,000 gift in order for Mary Beth and him to purchase a house?

A. Yes.

Q. Do you recall that?

A. Yes.

Q. And that gift was given to Steve; is that correct?

A. Yes, it says to Steve.

Q. Okay. Also I see all within the next couple of days, 5-15 and 5-16, it shows that you had some -- you gave them additional fundings, it looks like \$5,000 for escrow costs?

A. Yeah, I --

Q. Go ahead.

A. If I may, I had discussions with the lender, and determined that we could lower their payment by buying a

1 point, so to speak.

2 Q. Sure.

3 A. And in addition to that, there was, I think it was
4 \$2,000 more, if I recall, to cover the escrow costs above the
5 \$20,000 down payment. I may have those two numbers in
6 reverse.

7 Q. Okay.

8 A. But one was for increased escrow costs, and the
9 other was to reduce the monthly payments that they'd have to
10 pay by buying a point.

11 Q. Okay. And so actually for them, for Mary Beth and
12 Steve, to buy that house, you provided them a total of
13 \$25,000; is that correct?

14 A. Yes, sir.

15 Q. Do you understand that Steve has requested that the
16 \$20,000 be credited to him, but he is allowing to let \$5,000
17 go, split between Mary Beth and himself?

18 A. No, I didn't know that. I knew that the \$20,000,
19 was a gift, and I don't know what Steven agreed to.

20 Q. Okay. I'd like to go on the back page, I believe
21 it is page 4. Okay. Like I said, the date of the loan for
22 the pickup was 10-22-97, it shows eight payments.

23 A. Yes.

24 Q. Is it your testimony or your recollection that Mary
25 Beth and Steve had paid you back eight payments of \$300 a

1 payment?

2 A. Yes.

3 Q. Okay. And I believe you earlier said that Mary
4 Beth had agreed to pay it and she was the one that actually
5 paid the loan to you?

6 A. She was -- she was writing the checks. I think she
7 took care of the finances, as one person typically does, she
8 was the check writer in the family.

9 Q. Okay. Do you have any intention of forgiving the
10 loan, the \$17,000 loan -- the remaining balance to Mary Beth
11 and to Steve?

12 A. No.

13 Q. Okay. How long has -- excuse me. Did you get to
14 see your granddaughter yesterday?

15 A. For about an hour and a half.

16 Q. Were you with Steve when Steve requested extra time
17 to spend with his daughter?

18 A. We came in on Saturday, I don't if I've gone back
19 too far, and the timing of yesterday -- we had her -- no, he
20 had her the day before, which was I guess the day he
21 typically has her. And he took her back that night and then
22 he had to go -- he dropped her off, I think about eight
23 o'clock, I can't recall precisely. Then he had to go back
24 and get her at 8:30 in the morning to take her to the therapy
25 meeting that he had and Grace had scheduled.

1 Q. Okay. So you have been here since Saturday?

2 A. Yes, sir.

3 Q. How many hours have you seen Grace?

4 A. Well, we saw her an hour and a half yesterday. We
5 saw her most of the day that he had her, which was -- the
6 time was Monday I guess. And he had her when we met at the
7 airport.

8 Q. So you have seen -- you have seen your son with
9 Grace recently?

10 A. Oh, yes.

11 Q. Did anything -- did anything stand out -- were
12 there any concerns that you had that Steve wasn't parenting
13 properly?

14 A. Absolutely not. I am very proud of the way he
15 takes care of his daughter. And she responds very well to
16 him. And I think he is just an absolutely super father.

17 Q. Okay.

18 MR. RINDAL: I have nothing further of this
19 witness, Your Honor. I'd move for -- excuse me, I'd move for
20 admission of Respondent's Exhibit H.

21 MR. ALBACK: I have no objection.

22 THE COURT: H is admitted.

23 (Respondent's Exhibit H was admitted.)

24 MR. RINDAL: Thank you.

25 ///

CROSS-EXAMINATION

1 BY MR. ALBACK:

2 Q. Mr. Clayton, I just have a few questions for you.

3 A. Yes, sir.

4 Q. As I look at Exhibit H, it appears that at such
5 time -- you were aware, were you not, that the pickup was
6 sold ultimately?

7 A. Oh, yes.

8 Q. Okay. And do you know when it was sold?

9 A. I don't recall the date.

10 Q. All right.

11 A. I know they had the car for a shorter period of
12 time than they had intended, and they decided somewhere along
13 the line to trade down so they could accumulate some cash in
14 order to do some things that they felt they needed to do.

15 Q. Okay. And did it occur to you at that point in
16 time to seek repayment of this loan that you intended?

17 A. No. That loan wasn't altered by that. The fact of
18 whatever they did with that car and sold it, did not alter
19 the loan that I gave them or that money.

20 Q. That is not what I asked you. Did it occur to
21 you -- I mean, you were aware that they were selling the car?

22 A. They didn't ask --

23 Q. Or pickup?

24 A. They did not -- no, I was not aware.

1 Q. Oh, okay. Had you been aware of it, and had you
2 been aware that they were going to receive \$21,000 for it,
3 would you have asked for your money back then?

4 A. I don't know. I don't recall the circumstances as
5 to what their needs were at the time and why they made a
6 decision to sell that car.

7 Q. Okay. There is no promissory note?

8 A. It was a father/son -- it was an on-the-spur phone
9 call when he was sitting in the dealer's office telling --

10 Q. Was Mary Beth on that phone call too?

11 A. No.

12 Q. Okay. I'll represent to you that they sold the
13 vehicle in 1999, I believe, the pickup. And I noticed from
14 your -- your Exhibit H that you prepared, that throughout,
15 oh, starting all of '99, through 2000, 2001, 2002, you
16 regularly sent money to your son, apparently in amounts
17 anywhere from \$300 a month to \$1,000 a month regularly, some
18 as high as \$1500, \$1275, \$1500; would you agree?

19 A. Yes.

20 Q. Okay. Did it ever occur to you that out of that
21 money, which I didn't take it as a gift, right, to these
22 folks?

23 A. Yes.

24 Q. Did it ever occur to you to say, Well, guys, you
25 ought to pay my \$300 a month back?

1 A. No.

2 Q. It didn't?

3 A. Do you want to know why?

4 Q. No, I don't. But it never occurred to you, did it?

5 A. No.

6 Q. I will guess why, though. My guess is because it
7 would be taking out of your left pocket and putting it into
8 your right pocket, isn't that right?

9 A. No.

10 Q. Or into Steve's right pocket?

11 A. No.

12 Q. Isn't that right?

13 A. No.

14 MR. ALBACK: I have nothing further of this
15 witness, Judge.

16 THE COURT: Mr. Rindal.

17 REDIRECT EXAMINATION

18 BY MR. RINDAL:

19 Q. Mr. Clayton, why didn't you demand the money or
20 reduce your amount of gifting after you learned that they had
21 sold the pickup?

22 A. Why did I reduce the amount of gifting?

23 Q. Why didn't you.

24 A. Why didn't I? I don't know if I could tell you
25 why. I don't know if I honestly know. One of the main

1 reasons is that being so far away, it's hard to recall all
2 the circumstances and all the dates.

3 My son was working on a job where he could
4 afford -- he and Mary Beth I believe were making comparable
5 incomes in that time, when he was working for Freuhauf. That
6 job disappeared. He didn't finish his education at the
7 university, he went off to a summer vacation -- a work,
8 excuse me, at Yellowstone met, Mary Beth and they
9 subsequently got married. And he did not finish his college
10 degree, which my wife and I had invested some significant
11 amount of money in to educate our son.

12 When he lost that job, the decision was made, I
13 think by Mary Beth and Steve, for him to go back to school.
14 In order for him to go back to school, it was going to be
15 difficult for them to do so. And we helped them financially
16 with tuition and with books and with some costs of living.

17 And if he told me he was short, or they needed some
18 money for a certain item, I would often respond, because I
19 could. And I kept diligent notes to that extent, because
20 when my time comes, I want to make sure that my daughter and
21 his brother, receive ample share of the estate.

22 And because of the circumstances of his education
23 and his marriage and his expenses, he's a little a head of
24 the game right now.

25 MR. RINDAL: I have nothing further, Your Honor.

1 MR. ALBACK: Nothing further, Judge. Thank you.

2 THE COURT: I have one question

3 THE WITNESS: Yes, ma'am.

4 THE COURT: When are you due to leave Billings?

5 THE WITNESS: Tomorrow morning.

6 THE COURT: Thank you.

7 MR. RINDAL: Your Honor, the Respondent rests.

8 THE COURT: Very well. The Court, of course, will
9 take this matter under advisement, but I am going to order
10 that there be an immediate alteration to the visitation
11 schedule so that Grace can spend the evening with her
12 grandparents.

13 MR. ALBACK: Very well, Your Honor.

14 MR. RINDAL: Thank you, Your Honor.

15 THE COURT: And with that, Court is in recess.
16 (Proceedings concluded.)

17 --00000--

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CERTIFICATE OF REPORTER

I, STEPHANIE MICHELS, Registered Professional Reporter,
Registered Merit Reporter, and a Notary Public of the State
of Montana.

Do hereby certify that I reported in machine shorthand
the foregoing proceedings at the time, place and with the
appearances of counsel hereinbefore noted.

I further certify that the transcript transcribed from
my original shorthand notes by means of computer-assisted
transcription, is a full, true, and correct transcript of the
oral testimony adduced therein, to the best of my ability.

I further certify that I am not of counsel for, nor in
any way related to, any of the parties in this matter, nor am
I in any way interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed my Notarial Seal this 20th day of September, 2003.

(Seal) STEPHANIE MICHELS
Registered Professional Reporter,
Registered Merit Reporter,
and Notary Public of the State of
Montana. Residing at Billings,
Montana. My commission expires:
September 26, 2006.

GIFT LETTER

Date: APRIL 30, 1998

TO WHOM IT MAY CONCERN:

We (I) ARTHUR AND NANCY CLAYTON are (am) giving our (my)
SON, STEPHEN CLAYTON the amount of
(relationship) (name of recipient)

\$ 20,000.00 as a gift, for which there is no obligation to repay in the form of cash or services at any date.

Arthur W Clayton 4/30/98
Donor Signature Date
Nancy E Clayton 4/30/98
Donor Signature Date

Donor Address

Donor Phone Number

Borrower Signature

Date

Borrower Signature

Date

Gifts from sources other than relatives, borrower's employer or labor union, a charitable organization, a governmental agency or public entity that has a program to provide homeownership assistance to low and moderate income families or first-time homebuyers, or a close friend with a clearly defined interest in the borrower, require a reduction to the sales price.

There must be a paper trail established. Provide the following:

 copy of the donor's withdrawal slip or cancelled check
OR

 copy of cashier's check with donor's name identified

AND

 borrower's deposit slip or bank statement showing the deposit

Evidence of wire transfer from the donor's acct. to the borrower's acct. is also acceptable.

REP EXH E